

AN EXACT
ABRIDGMENT
In *English* of all the
REPORTS
OF THAT

Learned and Reverend JUDGE
Sir *James Dyer* Knight,
And sometimes Lord Chief Justice of
the COMMON PLEAS.

COMPOSED BY
Sir *Thomas Ireland* Knight, late
of *Grays-Inne*, and heretofore Reader
of that Honorable Society.

Wherein is contained the very substance
of all those REPORTS at large.

With a perfect TABLE to the same,
Being a perfect abstract of every
particular Case.

London, Printed for *Matthew Walbancke*, and
John Place, and are to be sold at their Shops
at *Grays-Inne-gate*, and *Furnivalls-Inne-gate*.

1651.



To the Reader.

GENTLE READER,



Hope I shall not need to use either many words or much eloquence in the commendation of this small although polite Abridgment, in regard not only of the fame of the honorable and learned author, out of which this was abstracted, but likewise in respect of the living worth of the deceased Sir *Thomas Ireland*, the judicious Composer of this work: You have been lately pleased to accept of a former peece of his, which imboldeneth me to present you with this further fruit of his labors in the like nature, for the generall good of the Common-wealth. If any errors have passed the Presse, blame the Printer; I humbly conceive I have more reason to be sorry for that then your self.

THE

THE
ABRIDGMENT
OF THE
REPORTS
OF THE
Lord DYER.

The fourth year of Hen. 8.

Plas. 1. Fol. 1.

IN debt upon an Obligation, the Defendant pleaded in Bar, that it was indorsed upon Condition, to make Accompr, &c. And that the Plaintiffe had accepted of a Lease at Will, in satisfaction of all Accompr, Judgment, &c. The Plaintiffe demurred. And it was adjudged no Bar; For where a Condition is Collateral, the acceptance of another thing is no ~~no~~ contrary, where the Condition is to pay money; accord- ¹² H. 4. 9. H. 7. 17. & 20.

2. Attaint and Error were maintained by him in reversion, after the death of the Tenant for life (upon errone-

ous Judgment or false verdict given against the Tenant) at the Common law. And now by the Statute 9 Rich. 2. cap. 3. they are maintainable in the life of the Tenant, 18. Edw. 3. Error 32. *Scire facias* was brought by the Feoffees of the Conusor, being a stranger to the Record. If after a Parson hath recovered an Annuity, the Benefice be appropriate, or union made, the Abbot or the Parson shall have a *Scire facias* upon the said recovery, if again there be Arrerages. And it was said, If the King grants his own Recognizance, it shall be sued in the name of the Grantee; But if he grants an Obligation forfeit by outlawry, it shall be in the Kings name.

3. In a *Quare impedit* against Cook and his Clerk, it was holden, That a Clerk is not enabled by the stat. 25 Ed. 3. c. 7. by the word Possessor, to plead in Bar, til Induction, for it is that which makes him possessor; upon that he pleaded he disturbed not.

Mich. 6 H. 8. fol. 2.

4. *Repleg.* Empson avowed for a Rent-Charge granted to him by a stranger, who was seised of the land where, &c. *pro consilio impendendo.* It was pleaded in Bar, that the Defendant was attaint of Treason, and committed to the Tower, and that the Grantor had businessse for to have his counsell, and could not have accessse to him, &c. and upon Demurrer, Judgment was, that the Avowdant shall have the Rent, for the Rent cannot be forfeit, neither granted over. As land given by the King to a Duke to maintain his dignity, may not be granted. Also the Defendant being in prison may give counsell, as well as when he is at large, and no default is Assigned in him.

5. In debt against the Executors of Redy, at the issue, upon Fully administred pleaded, &c. the Plaintiffe gave in evidence that they had goods in their hands; the Defendant pleaded that they redeemed part of them with their own money, which goods were pledged by the Testator to the full value, and for the residue that they had paid for the Testator

Testator, so much to the full value. - And upon Demurrer, It was adjudged a good evidence to maintain the issue, for a man shall have recompence for that which he hath lawfully paid; as a Disseisor paying rent it shall be recoaped in damages. And it is not like the case, where the Testator devises that his Executors shall sell his land, for in that case they may not retain it; because it is the will of the Testator that they shall sell.

6. Alien born is no plea in disability in an Action personal, except he be of the allegiance of the Kings Enemy; Contrary in a reall Action, for an Alien may not have land in the Realm, if he be not made a Denizen.

Plaf. 3. 19 H. 8. fo. 3.

7. A fine was levied by Tenant in Tayle, after the 4 H. 7. cap. 24. and proclamations passed, and five yeers incurred, after Tenant in taile died; the question was, Whether the Issue shalbe barred as privy, because he is to make his conveyance by his Father, or that hee shall not be reputed privy, because hee claimes *per formam Doni*, and then his right be saved, by the second saving, because he is the first to whom the right descended after the fine engrossed; *vide* new Stat. 32 H. 8. But it was agreed, that if he to whom the remainder in taile or other title first accrued, suffered five yeers to incur without claime, that this laches of the Ancestor shall bar the issue.

Tri. 4.

8. By *Brudenel* and *Eglefield*; If a man make two Executors, provided, that the one of them shall not administer, that it is a void hecaiso, because it restrains all the authority given in the premises, and the intent which agrees not with the law is not to the purpose; As a devise to A. in fee, and if he die without heir that it shall remain, &c. is a void remainder. So a devise to the Abbot of *S. Peter*, where the foundation is *St. Pauls*: And so then an Action of debt was well brought in the name of both the Executors, notwithstanding the proviso: But *Fitzh.* was of opi-

nion, that it was a good proviso, because he may bring an Action although he doth not Administer, and that a man may make one man Executor of his Plate, and another of his Goods, and another of his Debts: And may make an Executor of his Goods in one County, and another Executor of his Goods in another County.

Tri. 24 H. 8.

9. *Rusdens* Case: Termor rendring Rent granted his term in parcell of the land; the Grantee made a Feoffment; it was said, that an Action of Debt lyeth not for the Rent, till the Reversion be recontinued, *quia accessor sequitur, &c.* As a Disseisee of a Manor, with an Advouson appendant may not present after the descent, till hee hath recontinued the Manor; Contrary before descent, because his entry is congeable: & upon Recontinuance *supra*, he may sue the first lessee for the intire rent, & the privity remains as well when parcell of the land is granted, as when parcell of the term is granted: and no apportionment shalbe made; for before the stat. *Quia emptor*, no apportionment was by the act of the party, but by the act of the Law, and particular estates yet abide at the Common law *per Henley*.

Mich. 25 H. 8.

10. The youngest brother disseised the eldest brother, who is Barred in an Affize by false oath, the youngest brother Charged the land, and died without Issue, and the land descended to the eldest; he is without remedy to avoid the Charge, for hee shall not be remitted against the Record; and there was not any against whom hee might bring an Attaint.

11. Stat. 21 H. 8. A Servant receives money upon an obligation, or upon sale of wares, and goes away with the money; It seems not to be within the statute, for hee had not the money by the delivery of the Master: But contrary to it, if hee had money by the delivery of another Servant; For it is the Masters delivery by another. So if he had gone away with the obligation it selfe, it seems not to be

be within the statute, because it is a thing in action and not valuable; whereas the words of the statute are of Goods to the value of 40*s*. Yet *Fitzh.* opinion was, That by the Grant of all Goods and Chattels, an Obligation shall passe.

12. *Idemptitate nominis* lieth of Surnames, and not of the names of Baptisme.

Mich. 13. 26 H. 8.

13. *Knowles* let land which was devisable, for yeers rendering rent, and devised the rent to *A.* It was holden, that the Executor, and not the Heir of the Devisee shall have it, because it is but a Chattell in the Devisee: But *Baldwin* and *Shelly* held, that the Devise was void, being a new thing, to which the Custome reacheth not: But *Fitzh.* made a diversity, where Rent is incident to the Reversion, there it shall be of the nature of the land; But contrary of a new Rent Charge.

14. An Indenture of Bargain and Sale, in which were divers Covenants, & in the end were these words, *ad quas conveni. perimpl. obligo me in 20. l. &c.* In debt brought upon that, payment is no plea without an Acquittance; for it is as a single Obligation, 28 H. 8. 25. *idem*.

15. In a Formedon against *A. B. & C.* *A. & B.* Confessed the action: But *C.* pleaded Jointenaney with *B.* without that that *A.* any thing had; the Demandant maintained his Writ, *viz.* that they three are all Jointenants, and upon that Issue was taken, and holden by the Court a good Issue; But the Demandant shall not have Judgment for any part till the Issue be tryed.

Pas. 28 H. 8.

16. Lease for yeers by Indenture: the Lessee covenanted and granted, that if his Executors or Assignes did alien, that it should be lawfull for the Lessor to enter. After he made his wife Executrix and died, the woman took another husband, and he aliened, now if this was a breach of the Condition or no, was the Question: Some held not, because the husband is in by the law, and not Assignee, as

is Tenant by the Curtesie, and the Lord of a villaine, &c. But *Brown* and *Shelley* held, that the husband is Assignee in law, and that the lands are subject to the Condition in whose hands soever they shall come: Quere if the words *supra* make a Condition. And if a new Lease before entry be good, to which all said, It was not.

17. In a Precipe the vouchee was returned dead, *per Curiam* the Tenant may vouch at large, for the Vouchee never entred into warranty; Quere if he may vouch one as Heire within age, because the plea shall abide for the non-age of the Vouchee.

18. A Termour devised his term to his eldest daughter and her Issues, the remainder to the youngest daughter, &c. the eldest died without Issue, and her husband aliened the term. *Baldwin* and *Shelley* held, that the youngest daughter is without remedy; because a void remainder being only of a term, as it is of a Chattle personal; *Englefield* contrary, because of the intent.

19. By *Shelley* the Philizers Office may not be granted although it be a frank-tenement, of which an Assize lieth, because it is an Office of trust, for it may not be aliened; the same law of an Office of Carver, &c.

Trin. 89. 10, 11, 12.

20. In a Writ of Gard the case was, before 27 H. 8. a man infeoffed I. S. of land held by knight service, to the use of *Bokenham* and his heirs. After J. S. infeoffed J. N. to the use of *Bokenham* and his wife, and to the heirs of *Bokenham*, after *Bokenham* died, and his wife yet living, having a son within age: And it was holden, that he shall be in ward in the life of the feme, by stat. 4. Hen. 7. as the Heir of *Cestui que use*; for the ancient use is not gone, but only for so much as it was altered in, so that it is a Reversion in the son, and not a new Remainder, for a thing may not be given to a man which he had before, as if Tenant in tail infeoffed him in reversion it is no discontinuance.

It was the Lord *Rosses* case; that *Cestui que use* of two acres

acres, one holden by priority, the other by posteriority, made a feoffment of both to his own use, it made not a owelty, because the use remains.

The Writ here [supposed, that B. held of the Plain-
tiffe, &c. and counted that he was but *Cestui que use*, so
that the Feoffees held. But by *Knightly*, because star. 4 H.7.
gives the Gard, and appoints not a speciall Writ, the gene-
rall Writ, and speciall Count is good: as *warrant Chart.*
shall be unde Chart' habet, yet his Count may be upon war-
ranty by *Homage ancestrall*. By *Knightly* also, that the use
behoveth to be altered by reason of the person, as the King,
or a Corporation may not bee seised to an use; so of the
estate, as an estate for life or in taile, because of the tenure,
except the use be expressed, or for money, because of the
Consideration: and holden, that a warranty is not sufficient
consideration to alter an use, so a feofment rendring rent
is no consideration, because it is issuing out of the same
land: Also it was argued by him, that a Lease to two, for
the life of one, stands well in jointure, although no survi-
vour on one part: Also a lease for anothers life, without
impeachment of waste, the remainder for his own life, that
drowns the lesser estate, and makes him presently punisha-
ble by wast: Also by *Brown*, If an infant make a feofment,
and die without Heir, the feoffee is Tenant by title,
and therefore the Lord may not enter for Escheat.

21. Tenant in taile made a Lease for life, the remainder
to the Donor in Fee. Quere if it be not a discontinuance,
and vesteth a new Fee in the Donor; *Knightly* it seems not,
because he may not lose and take Fee by one and the same
livery.

13.

22. Upon a divorce the woman shall have her goods a-
gain which were given in marriage; except they are spent,
per Fitzh. and Shelley, because they were given for ad-
vancement of the woman, & *Cessante causa, &c.* As upon
deraignment, the party shall re-have, 13 Ed. 3. upon di-

B.4

vorice

voice he shall lose the land: for which cause it was moved, *Fitzb.* that it shall bee divided.

23. By *Shelley* and *Baldwin*, a Presentment in the Leet of Blood-ſhed may not bee traverſed after the day of the preſentment; contrary of things which touch franck-renewment. Leets were derived out of the Turn of the Sheriffe, by *Fitzherbert*.

14.

24. A Leaſe to the husband and wife by Indenture, with proviſo, that if they are diſpoſed to alien, that the Leſſor ſhall have the firſt offer, if he would give for it as another would; It was doubted whether it be a Condition or no; but by *Shelley*, if it bee but a covenant, the wife ſhall bee bound by that if ſhe ſurvives, and occupy, eſpecially being a covenant which ariſeth upon the eſtate, *vide* 46 E. 3. 38 Ed. 3. A ſcoffement to two with covenants, and but one ſealed to the ſame, the other ſurvived and occupied, and he was bound by the ſeal of his companion; and by *Shelley* in the caſe *ſupra*, It ſufficeth to make proffer, without ſaying what is offered by others, till the Leſſor ſaid that hee would have it, which ought to bee ſhewed preſently, without reſpit of conſideration peremptory for hindring the ſale.

25. A Termor covenanted in his Leaſe to build, and no mention of his Executors, the term expired, and the Leſſes died, *Fitzb.* and *Shelley* held, that the Executors ſhall be charged. But the heir ſhall not bee charged upon an Obligation, except he be named; But *Baldwin* ſaid, that the covenant *ſupra*, ſounded but to wrong and damage, which dieth with the perſon; but upon an Obligation the Executors ſhall bee charged without being named.

26. In Debt againſt a Termor; it was adjudged, that *non habuit, nec occupavit*, is no plea; but otherwiſe it is of a Tenant at will, *per Fitzb.*

27. By

27. By *Mountegue* it is; cleer law, if a feoffement bee made to foure without deed, and livery bee made but to one, that nothing passeth to the rest; & *non negit.*

15, 16, 17.

28. The Condiiton of an Obligation for marriage money was, That if the woman die before *Michaelmas* without issue of her body then living, that the Obligation shall be void; She had issue and died, and after before *Michaelmas* the issue died; and it was adjudged that the Obligation was void for (then living) shall have relation to the next antecedent, *viz. Michaelmas*, and not to the death of the woman; and the Condition being for advantage of the Obligor, if it be doubtfull it shall be construed to his best advantage; and in doubtfull words, that interpretation shall bee taken which is most agreeable to the intent, and the intent is apparent that it was regarded to the continuance of the issue; Besides where the intent of the parties isto have continuance in a thing, the thing which they would have continued, shall be referred to the very last time which possibly it can, *per Fitzh.* as a Condition to graffe stocks before *Christmas* then growing, shall bee referred to *Christmas*; so that if they die or faile before *Christmas*, the Condition is broken, and there it is holden, that where Death and Life are in issue, it shall bee tryed where the issue was in life; so that it seems, that hee who pleaded that the issue was dead, needs not to shew the place of his death.

18.

29. A recovery to my use, and after I infeoffe the Recoverer, yet it is holden, that he shall be in by the Recovery, and so still seised to my use.

30. A man seised of two acres of land in one counry, let one to A. for yeers, and the other to B. for yeers,
and

and after infeoffed a stranger of all his lands in the said County, livery in one acre in the name of all is not good for the other; Contrary, if the other had been but Tenant at will; But if he had been Tenant at will to my Disseisor *per Knightly* my feoffment may not determine the will of another.

31. A man made a Lease of a house, and after infeoffed a stranger of the house, and of one acre in possession, and made livery in the house (the wife of the Termor being there) in name of all, And by *Shelley*, if the livery be void in regard of the house, it shall not be a good livery within the view for the acre of land in possession; because the intent to make actuall livery, and not livery in law, which also shall not be done but in case of necessity: But *Knightly* held, that the acre shall passe.

19.

32. Trespasse of a close broken in *O.* the Defendant justified in *S.* without that hee is culpable in *O.* And by the Court it shall be entred generally not culpable, *vide 9. H. 6.*

33. A Lease reserving wood and underwoods; the Termor cut, holden, that no waste lies, because the statute is in *servis, boscis, &c. sibi dimissis, &c.* By reservation of woods the land is not reserved, by *Shelley*, for the Tenant shall have the herbage, &c. But by a Grant of woods the land shall passe, because the deed of every man shalbe taken most strongly against himselfe; and in a writ of Entry, where the demand is of twenty acres of wood, the land shal be also recovered.

34. In Action upon the case by two, for calling them false Knaves and Theeves, *per Curiam* they may not join, because the defamation of the one is not the defamation of the other. So in false imprisonment.

35. *Per Curiam*, If an Obligation be made, and faile in words, in *cujus rei testimonium sigill, &c.* yet it is good if it be sealed.

36. *Per*

36. *Per Curiam*, Obligamus nos & utrumque nostrum is severall as well as quemlibet nostrum.

37. A Lessor covenanted that the lessee shall have sufficient hedgebote by the assignment of his Bailiffe, and fuell.

1. By *Shelley*, He may not take without assignment, *quia modus & conventio vincunt legem*.

2. That the Copulative (&) makes it, that he behoves to have Assignment of the fuell; *Baldwin* and *Shelley* contrary, not being words in the negative, & non aliter.

20, 21, 22.

38. In debt by *A.* against the Administrators of *G. Woddy*, and counted upon such a Bill, viz. Be it known to all men, &c. that I *G. W.* have received 20*l.* of *A. J.* to bear the adventure to *Roan*, and there to bestow it in Herrings, and to see them shipped, and *A.* to bear the adventure home, and averred that *G. W.* had not bestowed it in Herrings, and it was adjudged that an Action of Debt lieth very well upon the said Bill; for an Accompt lieth not against Executors or Administrators, because they are not privy to the Accompts; And although there be no Bill, it is in the Election of him who delivered the money to have an Action of Debt or Accompt; for a Detinue lieth not for money numbred, because one penny may not be known from another: And the Testator may not wage his law against the said Bill being sealed and delivered as a Deed, for all words which prove by specialty one to be debtor to another, is a sufficient Obligation, and the Executors and Administrators shall be charged although they are not named; contrary of the heir. But it was agreed, that if he had imployed the money, that debt lieth not. And there it is said, that a man shall not wage his law against a talle written and sealed; but otherwise of a Scoch; and by *Fitzjames*, that in an Action of Debt for wages, for a Sum due for tabling, for arrearages of Account, and for rent upon a term a man shall not wage his law; but for such a rent a man

man may plead levied by distress, or payment although reserved by deed, because the Lease is the foundation of the action, and not the deed. Also by him, if a man bee indebted upon a contract, and make an Obligation for that, the contract is gone, and so upon a Judgement. And if a man make an Obligation for arrearages of Accompt; Debt upon arrearages is gone, 11 H. 4. contrary.

23.

39. Two as Executors had a Term, and the one granted all that to him appertained, *per Curiam*; the entire shal pass, because every Executor hath an entire authority; contrary of Joint-tenants.

40. Trespasse for a Glose broken, The Defendant said, that the place where, &c. are six acres in D. which is his franck-tenement; The Plaintiffe said, that it is his franck-tenement, and not the franck-tenement of the Defendant; If the Defendant give in evidence of other six acres in D, which are his franck-tenement, it is not to the purpose, for his Plea shall bee intended to bee referred to the six acres of the Plaintiffe, *per Curiam*, and the Plaintiffe need not make a new Assignement, because the Defendant varied not from his meaning, when hee gave no new name.

24.

41. The husband made a feoffment of his wives land, to the use of his wife, for life, and died, and the statute 27 H. 8. was afterwards made, the woman entred, shee shall not bee remitted; So if Tenant in taile make a feoffment to his owne use, and die, the Issue enters, hee shall not be remitted, for they shall have the possession in such quality, &c. as they have the use, *vide Amy Townesends case*, that to bee remitted, it's requisite to waive the possession, and to bring their action.

42. Abbot with the assent of his covent granted to the scoffor and his heirs, to sing Mass every Holiday, &c. & *quoties defectus*, 5. li. It seems upon default debt lieth for the heir, for it is a penalty which insues the land, but an annuity lies not *per Curiam*, because it is casuall, and peradventure never shall bee a default, Northwithstanding peradventure annuity lies of Rent payable every three yeers. Executors shall not have a Debt for reliefe, if the Lord had estate greater then for life or yeers, *per Fitzb.* And by him a Serjeant may not have an attachment of priviledge in an action which hee brings as heire; *Quere.*

43. A Parson let for three yeers, and those ended for three others, and those ended for three others, during the life of the Lessor; by the court it is a Lease but for nine yeers; but if the words had been, And so from three yeers to three yeers, during the life of the Lessor, it livery *secundum form. &c.* peradventure it shall be otherwise.

44. In a *Formedon* the Tenant vouched, and upon the Summons returned the Vouchee is essoined, and day given to the Demandant and Tenant, and at the day both the Tenant and Vouchee made default, *per Curiam*, a *Petit cape* shall issue against the Tenant, and no remedy against the Vouchee, because the Tenant had not attended the suite of the Vouchee, for the view may be demanded, &c. so that hee had not yet entred into *Garranty*.

45. A *Quare impedit* against the Bishop of Worcester, and the Guardian of Merton Colledge in Oxford, and counted, how that the Predecessour of the Guardian was seised in the right of his Colledge of Sixe acres, to which an *Advowson* was appendant in Fee, and presented. And after *William Catesby* was seised of the Sixe acres with the *Advowson* appendant in Fee, and died seised, and they descended

descended to G. his son and heir, and after the father was attaind of Treason by the Parliament, upon which the King seised the land, and the King so seised, the Church became void, and the predecessor of the defendant presented by usurpation upon the King, and after the attainter was annulled, and the son restored, and entred into the six acres, and infeoffed the Plaintiffe, and now the Church became void, and it appertained to the Plaintiffe to present, the Defendant demurred, and it was adjudged against the Plaintiffe, and a writ was awarded to the Bishop without making title.

46. *Brickhed* brought an Action of Debt for forty quarters of Malt, and counted upon two Obligations, in which the Defendant acknowledged himself to owe twenty quarters to be delivered at *J.* such a day, and if he failed, to forfeit forty: the Defendant pleaded tender, and that the Plaintiffe refused judgment, &c. the Plaintiffe demurred, and after released twenty quarters and had Judgment; Defendant ought to plead alwaies ready.

25 Hil.

47. One of the Pannell was sworne upon the principal, and all besides challenged by the Defendant, and hee that was sworn chose to him one to try; the pels, after the enquest remained for default of Hundredors, and the Plaintiffe suggested that there was not Freholders sufficient in the Hundred, and prayed processe to the next Hundred; but the Court denyed that till they were certified by the return of the Sheriff.

48. A man arrested upon a *Capias*, found surety according to the statute, after came a *Superseas*, yet *per Curiam* he ought to appear to save the bond.

49. A man devised his terme to his two sons equally; *Quere* whether they are Joint-tenants, or tenants in common.

50. A man shall be tenant by the curtesie, if the issue be born alive, although it be dumbe, so that it bee not heard cry, *per Fitzh.*

51. In

51. In an action of Debt upon an Indenture in which a man was bound to pay twenty pound, payment is no plea without an acquittance no more then upon a simple bond, contrary, double with penalty.

52. An Attainr, by name of J. S. Knight, where the first writ was of D. it was holden good notwithstanding the variance, because a new originall. 3 H. 6. 16. the same of an Estreperment.

53. A Dog kills Sheep, the Master being ignorant of his property, is not punishable.

54. Waste is found, by which the Committee of the King lost the custody of the land, by the statute of *Marlbridge, cap. 4.* Yet the opinion was, that he might maintain a forfeiture of marriage. So if entry be for Mortmain, Gard vested shall not be divested, But Abbot shall have the marriage, &c.

26.

55. The King seised the body and land of a Lunatick by commission, and granted that over; and it was adjudged that in a trespassse brought, that the Patentee shall not have aid of the King; and *Fitzh.* said, that when the Lunatick comes to bee of sound memory he shall have an accompt, but the lands of a Lunatick the King or his Patentee shall have to their own use; *vide stat. Preiog. cap. 9. & 10.*

56. The next avoidance is granted, *cum primo & proximo vacaverit*, the church being void at the time of the Grant, the Grantee shall not have this presentation, for it is a thing in action; but the next to that, which is the first which can be granted.

57. *Quere* if the Tenant in a *Cessavit* may bee averred pignor of the profits.

58. By the opinion of *Mounteg.* where a man makes a lease for yeers rendring rent, and after makes a Lease of the same land to begin during the first term, it is a good grant of the Reversion, and hee shall have the rent being but a chattell which

which is granted in reversion without attornment; But Baldwin and Shelley were contrary, vide Braces. Case.

59. A man recovered an annuity against a Parson, and had a *Scire facias* upon the Recovery against the Successor, who prayed in aid two patrons, in this case one only may not be essoined *per Curiam*, but Fitzh. said, that to allow an essoine where it doth not lie, is no error, but to deny an essoin where it lieth, is.

60. *Cestuy que use* devised that A. should have the government of his Children, and the letting and ordering of his land; in this case by the Court A. may not sell the land, for the intent appears to be an ordering for the benefit of the children.

61. Russell brought an action upon the case against A. for saying that he was a false thief, and that such a night he would have robbed him, *ad damnum, &c.* A. came and defended *vim, & quoad pro palationem, &c.* *querens non fuit dam. in forma qua, &c.* the Plaintiff demurred, and adjudged for him; for the words are confessed, and no damages more grievous then to take away a mans fame, &c. and a writ was awarded to enquire of damages without further argument.

27, 28.

62. The Abbot of *Westminster* brought an action of debt against the Executors of one *Leman* Clerk, upon an Obligation dated the 10 Novem. 13 H. 8. The Defendant pleaded an Indenture of Defeasance, dated the same day and year, by which the Plaintiff demised to L. the Rectory of A. and the said L. covenanted in that *quod ipse & assignat. sui. exoner. Abb. de omnibus onerib. ordinariis & extraordinariis. & durante termin. repar. edificia, & in fine term. reparat. suum redd. Ita quod non liceret alienari. sine licent. Abb. &c. sub pena foris fac.* by virtue of which *Leman* entered, & occupied till the first of August, 21 H. 8. during which time he payed the rent, and paid five marks *debit. per appropriat.*

Rector.

predict. qua sunt omnia onera tam ordin. quam extraordinar. necnon edific. repar. usque dictum diem quo die statum suum inde futur. concessit eidam P. & hoc parati sunt verificare,
Judgment if the Action, The Plaintiffe demurred.

Seven Exceptions taken.

1. Because the Defendant shewed not the date of the Indenture, but by the same day and yeer, referring that to the plea of the adversary, which is not to the purpose, so for default of shewing the time, it shall bee intended before the Obligation, *viz.* most strong against him who pleads it.

2. The Conclusion ought to be *prout in eadem Indent. plen. apparet*, or at the least *qua sunt omnes & singul. conventiones.*

3. Also he shewed not where the five Markes were paid, which ought to be because of the Viñe.

4. The Covenants be in the copulative, That hee and his Assignes would pay, &c. it ought to have been pleaded jointly, for though the Lessor might have a Covenant against the Assignee, yet that proveth not the Lessee to be discharged.

5. He shewed not the Licence of Alienation, and of the statute 21 H. 8. which prohibits Ecclesiasticall persons to have Fermes, doth dispense with the edit. it ought to have been pleaded, being but in particular to spirituall persons.

6. He shewed not that the Assignee was a lay person, where if he were not, the Assignment is void.

7. Notwithstanding that the statute 21 H. 8. had words that the Lease shall be void, if it be not aliened before Michael, yet there shall be entry, as *Cestui que use*, ought to enter, notwithstanding Stat. 27 H. 8. Judgment was given for the Plaintiffe.

29 H. 8.

63. One brought an accompt for Tin delivered by him to the Defendant, for to render an accompt, and it was
C holden

holden that it was no plea in Bar, that he had sold it, and taken an Obligation in the name of the Plaintiffe for the Money: But it is good in discharge before Auditors.

64. If composition between Tenants in common to present by turn, be one time executed, in a *Quare impedit*, it needs not to shew the composition; Also Parteners may make composition without deed, because privies in blood, and compellable by the Common law.

65. If my dog kill sheep without my incitation, I shall plead not guilty in a Trespasse brought for the same.

66. The Transcript of a Fine was removed by the Ancestor out of the Treasury into the Chancery, and it came into the Banck by *Mittimus*, to have a *Scire facias* to execute the same, and the Ancestor died. And holden that without a new *Mittimus*, the heir shall not have a *Scire facias*, for by the death of the Ancestor the authority given to the Justice of the Banck by the *Mittimus* is determined; But contrary 14 H. 7. for the heir; but agreed for he in remainder.

67. Trespasse, the Defendant justified, as Termor, by the demise of a Patentee of the King for life: And the better opinion was, that hee need not to shew the Patent; and the same law of an Under-sheriffe, Under-collector, & Incumb. because they have no means to come to the possession of it. But otherwise it is, if the Patentee had granted all his estate to the Defendant.

30.

68. In Detinue for forty Quarters of Whear, and counted upon an absolute contract, &c. The Defendant said, that it was upon condition to pay for it when it was delivered; and that the Defendant delivered twenty Quarters, for which the Plaintiffe did not pay presently: so the contract void. Judgment if the Action. And holden good without Traverse that the contract was simple; for the Traverse ought to be on the other part, viz. that it was absolute without

out it was upon condition, but agreed that the Defendant might wage his law, or plead *non detinet per patriam*. And agreed, that a contract is not 'good without present payment, except a day bee limited, and then the one shall have a Debt for the money, and the other a Detinue for the ware.

69. *Per Curiam*, Lessee for life by the Lease made before 27 H.8. by the Feoffees to an use, shall now be distrained by *Cestui que use* for the rent reserved without attainments; and if before the statute they had granted a Rent upon condition, it shall be now subject to the condition.

70. A man surrendred copy-hold to J. S. and is bound in an Obligation that J. S. shall enjoy it without interruption of any; and J. S. afterwards committed a forfeiture, and the Lord entred, the Obligation is not forfeit, because his own act.

71. Debt brought against Executors in *Middlesex*, the Defendants pleaded fully administr'd, &c. the Plaintiffe said, that they had assets in *Essex*, and upon demurrer adjudged good, because assets are transitory; and the Jury of *Middlesex* may take notice of assets in any county.

72. The Lord *Audley* Disseisor, let for life rendring rent, and granted the Reversion to the Disseisee, who accepted the rent; it is an affirmation of the Lease. *Concessit per quendam*.

73. The King Grants obligation forfeit by attainner, &c. the Grantee may sue in his own name.

74. A man who had a Warren, and a Law-day in his Mannor, by Charter, he granted the Mannor to the King, yet the other shall not pass without *cum pertinent*. and *per Curiam*, one may have either in another mans soil.

31.

75. J. S. made a Lease for life to A. and after hee made a lease to B. for yeers of the same land rendring rent; A. surrendred, J. S. incoffed a stranger, who suffered a recovery, & Tenant for life died. *Quere*, if the Recoverers may avow

for the Rent, upon 7 H. 8. cap. 4. for he against whom the Recovery was might not, because the Lease was not begun.

76. In waft brought by the Grantee of a Reversion, the Lessee may plead, that he in Reversion, did not grant by his deed, or that nothing passed by his deed, and give in evidence that he never made attornment, or he may traverse the attornment, *per Knightley, & Fitzherbert.*

77. In Formedon of a Rent charge in two acres Jointenancy in one, shall abate all the Writ, for a Rent charge ought to be demanded of all the Tenants of the land, but Rent service may bee demanded of the pernor of the profits.

78. In debt upon an Obligation, with condition to perform covenants in an Indenture, whereof one was to make such assurance as the counsell of the Obligee should devise, if he were to that required. The Defendant pleaded by protestar, that the counsell of the Plaintiffe did not devise, and for plea that hee was not required to make assurance; the Plaintiffe said, that J.S. his counsell devised a Release, and he required the Defendant to seal it, who refused; The Defendant rejoined, that he did not refuse, and by the Court it is a departure, and the issue joined a Jeofaile. And holden, that the Plaintiffe needed not to have pleaded the refusall, but only that he was required; because the Defendant had pleaded in the negative, that he was not requested, and so at issue.

79. If a Disseisor sow, and sever, and before it is carried the Disseisee enters, he shall have them.

Plaf. 32. 29 H. 8.

80. Tenant in taile, the Reversion in the King levied a Fine, or suffered a recovery. *Tenus* a Bar to the issue, but no discontinuance, because the King is in Reversion.

18. Upon issue of fully administred, the Executors gave in evidence payments of Debts upon contracts, where that was a sute upon an Obligation, the Plaintiffe demurred, and had judgment of the goods of the Testator, so much

much as was in the issue, and adjudged, that after an Action brought upon one Obligation, a Debt shall not be paid upon another Obligation.

82. *Baron & Feme Cestui que use*, before 27 H. 8. and after the Statute a writ of Entry in the Post was brought against the husband only, who pleaded Jointenancy, with his wife, *per Curiam* he ought to shew the Statute, as by the common law he ought to shew of whose feoffment. Pernors are gone by 27 H. 8. therefore the husband may not be averred sole Pernor of the profits.

83. In an Action upon the case the Plaintiffe was Nonsure; and the Defendant had Judgment of costs, upon Stat. 23 H. 8. And upon a writ of Errour brought the Record was removed into the Kings Bench, and after the Defendant sued an originall of Debt for the costs, in the Common place; And adjudged that it lieth very well, being an originall; and if the Record be denyed, it shall come by *Mittimus* into the Chancery. But the Common banck may write to a more baser Court; and by the better opinion, although the Record be reversed, hee shall have the costs assessed by the Court for the wrongfull vexation.

84. Debt for Rent, and counted upon the Demise of twenty six acres rendring rent; the Defendant said, that the Plaintiffe let to him the twenty six acres, and four acres more, without that he demised the twenty six only, and it was found, that he let but twenty one acres. *Quare*, If the Plaintiffe shall recover: It seems by the better opinion that he shall, for the Defendant confessed the twenty six acres by implication, and then the verdict is not to other purpose, but to manifest that hee did not let four acres more. *Curia advis.* But *Shelley* said, that the Defendant needed not to have traversed, because he confessed the 26 acres and more, but the traverse shall come of the part of the Plaintiffe, that he let twenty six acres, since he let the four acres, and then it had been a better issue.

33.

85. Lessee of a Meadow covenanted to repair the banks, and the banks are broken by sudden flood, he is bound to repair them, because of his covenant. But by *Fitzh.* and *Shelley* hee shall now have sufficient time to repair them, because of the decay, and also the act of God.

86. By the custome of *London*, a man may devise his land which he purchased in Mortmaine.

One devised to the Prior and Covent of *St. Barth. &c.* so that they render to the Dean and Chapter of *Pauls* 20. l. by the year, and if they fail, their estate to cease, and remain to the Dean. *Fitzh.* and *Shelley* held it to be a void remainder, because a Remainder may not be limited after an estate in Fee. And as to the Condition, the Dean and Chapter shall not have advantage of the Condition, but the heir.

87. He in Reversion made a feoffment and livery, the Termor being upon the land: It seems that it is a good livery, because the franck-tenement is seen, & the Rent passeth: But otherwise in case of a Lease for life, and although the Termor be content with the same, yet that is not a Surrender, per *5 H. 7. Quere*, if livery within the view, the Termor being upon the land, be good: If the Lord disseise the Tenant, and make a feoffment, and the Tenant re-enter, the Feoffee shall have the rent, for his estate is not openly defeated, as in the other case, but only the possession.

34.

88. In debt against a Chancery man, proccesse continued till the exigent, upon which he purchased a generall *Superfedeas*, he had lost the advantage of his priviledge, because it recites an appearance: But if he had sued a Writ of priviledge first, it should have been good, although at the Exigent, and then hee shall have a speciall *Superfedeas*.

89. Two outlawed in an appeel of murder, purchased a pardon, and had a *Scire facias* against the Plaint: and Seigniors, mediate and immediate (it seems it needs not to the Seigniors, for the pardon affirms the attainder and not reverse it) and the pardon agreed not with the indictment in the addition: But they may averre that they are the same persons; also the pardon was *Perdonamus A. & B. omnes utlag. versus prefat. A. & B. seu alterum eorum promulgat.* And although the words of pardon are joint, and they are joined in the words of pardon, whereas the felony of the one is not the felony of the other, yet by the ensuing words it is made severall, and his non-obstante pardon allowed.

90. A woman brought a Writ of Dower in a hundred acres of land in R. and S. and as to that in R. the Defendant confessed the Action, and the Plaintiffe had judgment, &c. And to the rest he pleaded to the issue, which the Plaintiffe relinquished, and had a speciall *Scire facias* in R. and upon a *Scire facias* returned, and default made, shee had a speciall writ of Seisin, because it appeared not how much of the hundred acres lies in R.

91. Per Fitzb. and Shelley, an Obligation may be delivered to the Obligee himselte, as an Escrow to bee a deed upon conditions performed, and that is not his deed till, &c. *Quere*

35.

92. *Concordat*, that a feoffement to divers without deed and livery to one in the name of all, is not good to the other.

93. Feoffee of a Conusor of a statute upon execution sued, had an *Audita querela*, supposing that the Maior of Chester, before whom it was acknowledged, had no authority to take the Conusance.

94. A common recovery was had against Tenant in taile, who died before execution: *per melior. opinio.* the issue shall

shall not be remitted, nor yet falsifie the Recovery, because of the Recovery in value of the Vouchee.

95. If a man grants the next presentation to one, and after grants the next presentation to another, the second grant is good by *Shelley*, and it shall be intended the next, which he may lawfully grant, and no difference between *proxim. presentat. & proxim. advocat.* But *Fitzh.* said, that if it had said, *proxim. advoc. mea.* peradventure that passeth which is next to dispose.

96. *Maleveret* brought a writ of Wast, and counted that he let a house, and six acres of land, and six acres of wood to the Defend. who made waste; cutting and selling twenty oakes in the aforesaid wood *sparsim*, growing; The Defendant for ten, said that the house aforesaid, *intempore quo, &c.* was in decay of Timber, for which cause he had bestowed upon reparations; and as to the other ten, that they grew upon one acre of land of the tenements aforesaid: which sometimes had been arable, and *pro melioratione, &c.* Plaintiff demurred. He ought to answer to the sale, for if he sold and after redeemed, and bestowed in reparations, as *5 Ed. 4.* is, the wrong by the sale is not gone; so also if a man sells the distresse, and after redeems, and puts it in pound again.

2. He did not conclude that this is the same waste, &c.

3. The words *prædicto tempore quo*, shall be referred to the time of the demise, for no time was put of the cuttings; so that if they were ruinous at the time of the demise, the Lessee is not bound to repair no more then if the house be dejected by tempest or enemies; and although he better the inheritance of the Lessor, yet it is not lawfull to doe wrong to another that good may come, as to drive beasts out of my corne, *21 H. 7.* or to carry my tithe in jeopardy to be destroyed by catel, into my barn; or to make a trench to convey water to better land in which I have common.

Yet for the common-wealth a man may justifie wrong;

as

as in time of war to make Bulwarks in anothers land; so the raising of a house which is burning for the safety of the neighbor; so a Sheriffe may break a house to apprehend a villain; but otherwise in cases which concern a private man, as upon a *Capias* in a Debt or Trespass. So if a Termor in persuing a villain him exile, if it be for felony it is no wast; if because he him had slandered; contrary by *Knightly*; and a Termor may not at all repair in Timber, without the assent of the Lessor, but only in small reparations, for the Lessor hath interest in the body of the trees, and the Lessee only in the branches, fruit, browes and shadow; and if the Lessor upon notice given do not provide timber, so that for default of that the house fall, the Lessee shall have an action upon the case, and that is but negligence, and not like to the case where the Defendant alledgeth personall wrong, which the Plaintiffe did himself; for there the Defendant shall Rebut the Plaintiffe of the action, by matter of another action; but not so heres; as in waste which the Plaintiffe himself hath made, in debt for rent against the Termor, or the Plaintiffe had him ousted; So in dower that shee detaines the charters.

4. It is holden that if a Termor set wood in arable, *vel e converso*, it is wast; so if he convert pasture into arable, and it is a prejudice to the inheritance; for if the evidence of the Lessor serves to prove that he had woods, or &c. although he may averre that to be the land, yet that may in time be unknown.

5.

Because the Defendant justified in one acre of land, and so answered not to the Plaintiffe; The Plaintiffe recovered.

38.

97. Jurors at a *Nisi prius* being agreed upon their verdict, they saw *Read* chief Justice going to see an affray, they followed

followed him; and did eat and drink; and after gave their verdict, and it was alledged in arrest of Judgment; and every one was fined 40*l.* yet the Plaintiffe had judgment; and after error was brought.

98. Array challenged, because the Sheriffe is cousin to the Defendant; after in making conveyance the Sheriffe was cousin to the wife of the Defendant; and yet holden very good, for the matter is the partiality; and it is aswell a principall challenge, if he be of the blood of the wife of the Sheriffe, as if of his owne blood *per Justiciari.* but because hee did not say, that it was at the time of the array made, the challenge was disallowed.

99. *Gawen* brought an appeal in *Wiltshire* against two, as accessaries to a robbery made, and counted of incitation on at *London*: Defend' *Demurr'* and *Hales Justice*, said, that it is well brought in *Wiltshire*, and till the robbery done, the counsell is no wrong; and the subsequent Action made it wrong in both counties. And where a man hath an Action founded upon two wrongs in several counties, the Plaintiffe is at his election to bring his Action in either, as in forging in one county, and making Proclamation in another: But an accessary after the fact, is no wrong done in the county where the robbery is committed. Also if it may not be brought here, the wrong is dispunishable, for a man shall have but one appeal against principall and accessary (*R. quere causa*) and in punishing wrong a man shall have favour in tryall; as it is in a *Mortdant cestor*; And in debt for wages, where the retainer is here, to serve in *France* in war; but the *Demurrer* supposeth a confession of the matter, so that the tryall came not in question, as 18 *Ed. 4.* where a debt was brought upon an obligation, and counted not where it was made, and the Defendant pleaded an acquittance; but four Justices were of contrary opinion, who said, that it is a maxime that tryalls shall be where may be best notice, and that is where the wrong begins; especially in personall wrongs.

If two Closes adjoining, being in severall Counties in *Curia claudenda*, because of the *decit* it shall be brought in the county where the Close of the Plaintiffe is. But if he had but a term, an action upon the case only lyeth, and it ought to be brought in the county where the land of the Defendant lyeth, because it is in the personalty (but an appeal is no action either reall or personall). Recovery in a *Quare impedit* in *Devonshire*, and the writ to the Bishop is delivered in *Middlesex*, who refused; a *Quare non admittit* shall be brought in *Middlesex*. Also Life, Liberty, and Dower, are favoured in Law, and the attainder of the principall because it is a matter of Record, those of *London* as every one is, ought to take notice of that. But peradventure of a thing which ariseth upon the land the action shall be brought where the land lieth. And where the Defendant may plead the generall issue in the severall counties, an action may be brought in the one county or other. As where an annuity is granted out of a parsonage in one county and seisin is had in another. So if a Physitian take upon him to cure in one county, and administers unhealthfull salve in another county. But if the generall issue may not be pleaded, as in our case he may not plead not culpable to the procurement, which is counted to be in *London*, then otherwise it is because it shall be wrong to the Defendant. And by *Brown* clearly the demurrer is no confession, but is to the insufficiency of the Count, for after that adjudged the Defendant may plead not culpable. And by them there is a diversity, if a man steals in one county and carries it into another, for there because the property is not divested, the appeal lyeth in every county. But otherwise in a Trespass, as also in an appeal of Robbery, for it is no robbery in the county where the goods are carried into. If a Lease be made in *Middlesex* of Land lying in *Essex*, rendring rent for years. So if Retainer be in one county and Departure in another, for the pivity the Plaintiffe may choose or bring

bring his action where he pleaseth. But otherwise after the privy destroyed, as after waste committed, or where a stranger takes the servant. London may not joine in tryall with another Countrey, and although it be a mischief to abate the appeal, yet it shall rather be suffered then an inconvenience of tryal, where there can be no notice for that part.

100. The Dean of Salisbury let to one Chaffin by these words, *quod Decanus ex assensu Capituli dimisit*, and the seal of the Chapter put to the deed, and good *per Curiam*, If the Dean be sole seised in the right of his Deanery. But if the Dean and Chapter be seised together, then words of assent are not sufficient, because persons able to make a Lease, and is not like the case of an Abbot and Covent.

Pas. 41. 30 H. 8.

101. In a Warrant of Dower upon issue, never seised so that she may have Dower; A remitter to defeat the estate of the husband is no good evidence by the Court, but it ought to have been pleaded, and so if the estate be defeated by condition: and the Court would not admit a verdict at large (1 Ed. 1. *conitar*) and for that reason it was found against the defendant for folly in pleading, and the Plaintiffe had judgement.

102. In a *Replegiare* the Plaintiffe is non-sute, and after he issued a second deliverance, a *superdeas* is had for a *Retur' habend'*, for it is but a reviver of the first plaint, yet after the Sheriff returned *averia elong'* upon that, and it was alledged in arrest of judgement that insomuch as it appeared that he himself *elong'* &c. that the Plaintiffe shall have judgment, for the return was without warrant.

42.

103. A writ of Proclamation upon the Exigent was returned

turned by the Sheriff out of office at the time, upon which the out-lawry was adjudged void *per stat. 6 H. 8.*

104. The Executors of *Greenliffe* brought an action of debt upon an obligation, and the condition was, that whereas *W.* hath sold to *G.* a certain Meddow in &c. the said *W.* shall warrant the said *G.* against Lord and King, and all other; if the said *G.* shall peaceably enjoy the said Meddow, to him and his heirs of the Lord of the Mannor of *M.* by the services due after the custom, that then, &c. The Defendant said that the Meddow is copyhold, and is holden of, &c. and that is customary and rent behinde, or for waste, the Lord may enter for forfeiture, and that *G.* took that by copy, and all his life *habuit & pacifice gavissus fuit, & obiit inde seifitus*, and it descended to the Plaintiff as son and heir, who of his own wrong entered without admission contrary to the custom, &c. And because 3. s. rent was behinde such a day, the Lord entered as forfeit, Judgment, &c. Plaintiff demurred. *Jenney* said that the condition is void, for if *G.* peaceably enjoy, it needs not that the Defendant should warrant it. And it was agreed that although it was not shewed what was warranted; yet it shall be intended of the Land about which was a communication. But the warrant to *G.* shall not extend over the life of *G.* Yet if the feoffee upon such warranty recover in value he shall recover in fee-simple; and it is not spoken to whom the warranty is made, but only that it shall be for him and his heirs, *per. 6. Ed. 2.* the garranty shall be according to the state. And as to the last part of the condition *Jenney* put a diversity, where words are that a man shall enjoy to him and his heirs, and where it is he and his heirs shall enjoy, for if he enjoys but during his life, he enjoys to him and to his heirs, because he had fee *per touts*, that a man is not holden to warrant against new titles after the garranty. (43) Also the Plaintiff is *particeps criminis* for that &c. *per*

104. the Bar is not double for the entry without *emittat* is but surplusage, and at the first he did not alledge it as a forfeiture. *Shelley* that *pacifice gavissus fuit* is but an argument, that he had warranty; And it is aailable argument also, for he may be impleaded for the issues which the obligor had forfeit, and yet it is not *contra pacem*, but *pacifice* made. But it ought to have been shewed directly how he had warranted, or that he was *non damnsi*.

105. Concord' that if a Parson purchase a Mannor and after he lets his parsonage, notwithstanding the unity he shall pay tithes, and so of his scoffice. But they were in divers opinions whether if a person let his Glebe rendring rent, if the lessee shall pay tithe.

106. After custome and subsidy paid for clothes in a tempest upon the Sea, the clothes were cast out, and the Merchant came again & Deputy customer. It seems that he may, and also gives to him license to carry over so much more without custom, all which was pleaded in Bar upon Informar' for subsidy and custom not paid, &c. Counsell the King demur' and it seemed reasonable that he shall not pay. And in many cases where a man hath loss and makes the other privy he shall have recompence. As if a man be implead' and vouch' he shall recover in value. So where a man grants a seignior by fine, and the Tenant dies without heir before atturament, and a stranger abate in the land, the Conusee shall have a *scire facias servitia*. The King after waived the Demurrer, and joined issue, that custom and subsidy *Domino Reg. deb' concealat' & substrac' &c. contra formam stat'*. and it was found that he did not conceal and withd raw &c. in manner and form as is supposed by the Information. And it's doubted whether this verdict shall be taken for or against the King, for if it be for the Defendant, it should be concluded *prout defend' allegavit*. Reed said, that it seemed to be their intent to acquit the defend' of conceal' but not of the Substrac'. It's there holden that custom is inheritable in the King
and

and due by the common Law. For the first *stat. viz. 14. Ed. 3.* which speaks of custom gives not custom, but abridgeth it for wool and corde.

Subsidy is a tax assessed by Parliament, and granted by the subjects during the life of every king, for defence of the Merchants upon the Sea. (44) And for that information of a subsidy for cloth is evill, for cloths were excepted in *stat. 1. H. 8.* also there is no statute which gives to the Informer the moiety, for all the custom and forfeiture for that is due to the King. And there it's holden that custom is well paid for the time, if it be before the departure of the ship out of the view of the Port. As it is of a distress chased within the view, and a prisoner within the view of the Gaoler.

107. It was found by office that Gilbert held land of the King as of his Honour of Philipton, and other land as of his Mannor of Dartington which came to the King by attainter of treason of the Marquess of Excester. It seems it is not holden *in capite*, for tenures *in capite* began in ancient time by the Grants of the King, to defend him against Rebels and Enemies, and *stat' Prerog. cap. 1. Quod Dominus Rex habebit custod' &c. Dum tamen ipsi tenuerint de Rege ab antiquo de Coron'.* and at this day the King may create a tenure *in capite* if he gives to hold of his person, but otherwise if he give to hold of a Mannor, Honor, &c. (45) and tenure *in capite* shall be immediately of the King, and shall be created by the King himself, for a tenure created by a subject can never be a tenure *in capite* neither shall have any prerogative annexed to it, and if the tenants of an Honour hold in gross, *viz. in capite* of the King, the Honor when it comes to the King shall be destroyed, *que nes issint.* Also it is no reason that a tenant in whom is no fault, that he should be prejudiced in his tenure by the offence of the Lord. Otherwise if forejudge or evict of his mesne. Also tenant *in capite* is inseparably of the person of the King, and cannot be released,

released, although he after grants the Reversion, for it is not incident to the Reversion, but to the person of the King: as it is of *Frankalm'*, every grand Sergeanty is tenure *in capite*, for it cannot be of any but of the person of the King. *Vide* a good case vouch' 6. Ed. 3. the diversity of the degree in which the King shall have an escheat, either as Lord or as King.

Mich. 31 H. 8.

108. A Lease upon condition that he shall not alien to *A.* the lessee aliened to *B.* and he aliened to *A.* the condition is not broken, for a condition which goes to the breacking of an estate shall be taken strictly.

109. A Lease upon condition that he shall not assigne his term during his life without the assent of his lessor, he devised that without &c. and died: by two it is a forfeiture, for he that is in that, is in by the Devisor; contrary of assignment in Law if one had that as Executor.

110. *John Minors* Tenant in tail made a feoffment upon condition to remake an estate to him and his wife in tail, remaind' to *T. M. filio meo &c.* the remainder to *Sibill filia mea*, the Feoffees reciting the deed, made a feoffment by words *Dedimus & concess'* to *J. Minors &* his wife, and to the heirs of their two bodies, remaind' *T. M. filio meo*, remaind' *Sibill filia mea*, and *J. M.* died, *T. M.* within age entered for breach of the condition, and holden that *Sibill filia mea* may not be intended the daughter of *J. M.* But peradvent' otherwise of *T. M. filio meo*, because none of the names of the Feoffees were *M.* (46) *Mountegue* and *Bromley* the partie who shal take advantage of the condition, is partie to the breach, for that &c. also his acceptance extinguisheth the condition, but otherwise if an estate be made to a stranger, it shall be taken strictly. But *quare* if the condition be but suspended during the life of the father, for the parties agreed.

111. *Milbourne* let land to two habend' *iis ad termin' vite eorum (conjunctim)* & alter' diutius vivent' & assignat'

nat' suis q. primus eorum decedere contingat, durante vita ejus q. superstes & non aliter. Plusors that the word *conjunctim* is no restraint to make partition. *Quere* if he that first dies shall assign all, if good by the words *supra*, or but a for a moiety, but if there was no assignment, the survivor shall have the intire.

112. A man wounded in one County died in another, the heir sued an appeal in the county where the death was, the defendant plead *non culp'*. *Tenus* that the Jury shall come out of both countries, and that the *visne* of each county shall be of the body of the county: and the trial be in the Kings Bench, and not at the *Nisi prius*: but *per Clericos* if a man be wounded in *Middlesex* and he die in *London*, the tryall shall be only in *Middlesex*, because *London* may not join.

113. A Bishop made a lease to two for years rendring Rent, and after he made a new lease with the confirmation of the Dean and Chapter to one of them, the Bishop died. *Quere* if by his death the first Lease be void in all, for because of the second Lease the liberty of the successor is gone of affirming the first Lease by acceptance of the rent in prejudice of the second Lease, but otherwise if the second Lease had not been. So of Tenant in tail, Abbot &c. who have inheritance. But of Lease of a person or tenant for life it is otherwise, for it is void by their deaths. But some held that the Lease was surrendered for the moiety only, and remained for the residue. *Quere*, for the parties agreed.

Paf. 32 H. 8.

114. A man let for life to A. after by Indenture renting the said lease, he demised the remainder to B. *habend'* the said remaind' after the determinat' of the first lease for 20. years: *quere* if the reversion passeth by name of remainder, and if there need attornment.

115. Indictment of the husband for the murder of his wife, it was found before the Coroner, *quod Elizab. fuit in*

pace &c. quousq; predict. A. vir prefat' E. of H. in com. predict. Yeoman &c. Tenuis that although it be not said *nuper vir &c.* so that it was objected if he be now her husband then is she living. For husband and wife are relative, yet good, because the death found *super visum corpor'* and the best shall be taken for the King. (47.)

2. The addition although *Elizabeth* be the next antecedent, shall be referred to the husband, because a woman may not be a Yeoman: contrary of Spinster,

Trin.

116. *Banister* brought a Trespass of entring into a house and issue joined upon the disseisin supposed to be committed before to the Plaintiffe, and the Defendant in evidence to prove that he disseised not, shewed a recovery of land, with averment of building the house after; the Jury was charged to finde the disseisin if they found not the building, but if &c. They prayed discret' and per 3. Justices a *Formed'* in *reverter* shall be of a house if it be built upon the land after the gift: but by others, by a recovery of the land the buildings upon the same are also recovered.

117. A Lease without impeachment of waste, and if it happen he make waste, it shall be lawfull for the lessor to enter, and the lessee made waste; per *Shelley* it is a void condition, because repugnant to the grant to be discharged of waste. Others held that it was good, because it shall be intended, that the lessee shall not be impleaded for waste, for to leese trebble damages, per that the lessor may enter.

118. *Quere* if debt lies against the Executors of an Administrator upon an obligation of the intestate, or a new administrat' committed.

119. Per *Shel* yt two Townes may not inter common because of Vicinage, where there is a third Towne between the Commons, because they are not neighbours,

Baldwin

Baldwin contrary, but such Common may not be used where the Commons are at severall seasons. And *per Curiam*, if two Towns are adjoining, and a great field lieth between them, and one who liveth in one of the Towns hath Common there with the tenants of the other Town, It behooves to make title for Common because of vicinage and not appendant.

120. A man was obliged to a Dean in *vol. solvend' eidem Decan' & Success'*, the Dean died, *per Shelley* the Successors shall have it, for an obligation may be made to him and his successors, as well as to his Executors. So of a Prior, Abbot, or Bishop. Contrary of a Mayor, or the Guardians of a Church. **Baldwin** held the payment to the Dean and Successors was void, because the obligation was to the Dean only. A man had two sons, the eldest is attaint and dies without issue in the life of the father, the youngest son shall inherit, but if he had issue the land shall escheare.

Mich.

121. One man had the nomination, an Abbot the presentation to a Church, the King after had the possession of the Abbot, and presented without *nominat' per Curiam*, a *Quare impedit* lies against the Incumbent notwithstanding, for the King may not be a disturber. **Townsend** moved that the King cannot be an instrument to any: **Shelley**, he is an instrument to every one in administration of Justice to him.

122. A Juror was laboured with by the Plaintiffe to appear and to give verdict according to his conscience, and no cause of challenge, *per Curiam*.

Pas. 33.H.8.

123. Upon issue joined of *Villaineregardant*, in evidence it is no good title that he is a villain in gross. But by Justice **Bramley** contrary, insomuch that their charge is upon the right of the villainage, *viz.* if a villain or not.

124. Tenant in tail of a Mannor with a villaine regardant infeofed J.S. of one acre, parcell of the Mannor *per* words, *Dedi unam acram &c.* and over, *Dedi & concessi R. villan' meum*, *quibatur* if the villaine pass in gross or appendant, because by severall grants, although in one deed; *Shelley*, the Advoulson appendant so granted is in gross; But otherwise it had been if the seoffment had been of the intire Mannor.

125. Tenant in tail of a Mannor with a villaine regardant, infeofed the villaine of one acre parcell of the Mannor and died, *per Justitiar.* the issue ought to recontinue the acre before he seise the villaine.

126. The Earl of *Bridgewater* tenant in tail, before the *stat. 32.* was bound in a Recognizance to him in remainder, that he should not make an estate longer then for his own life, if after the 32. he make a lease for 21. years or 3. lives according to the said *stat. Per 3. Serjeants*, he forfeits the Recognizance notwithstanding every of them is party to the statute. But he in reversion or remainder shall not avoid the lease made according to the 32. if tenant in tail die without issue, for so is the intent of the makers of the statute although no words in the statute of the Donor or he in remainder. (49) *Vide Austins* case adjudged contrary, where the King was within in point of reverter.

127. A man delivered money to the use of a woman, to be delivered to her at the day of her marriage; *quare* if the Baylor may revoke before the condition performed: and diversitie was taken where there is a considerat' precedent, and where it is meer good will; as for a New-years gift before the delivery. So a man may alter his Will annexed to a seoffment at the time of the livery, and he may revoke a letter of attorney before livery made; so of a bailment or delivery, before delivery be made over; and by *Baldwin* the case above, except the words of use alter that. And use alters not the property of chattels. For *stat. 50 Ed. 3. cap. 6.* to prevent fraudulent gifts of goods

to an use to the deceit of Creditors had been in vain, if the property had continued in the Donor. But 2. *contra* 2.

Mich.

128. Stat. 27 H. 8. which establishes the Court of Augmentation, wills that all grants for life or yeers of offices concerning the land of the said Court, shalbe sealed with the seal of that Court. It's doubted if a patent of such an office under the seal of the Chancery, *viz.* if the word (*shall*) be compulsory. *Bromley*, if it be enacted, that the youngest son shall have an appeal of death of his father, that shall not exclude the eldest because there is no word of restraint.

51.

129. Stat. 31 H. 8. made it treason for a woman to poison her husband. It seems that now an appeal lies not for the heir, because now the murther is changed into Treason, and the greater extinguisheth the lesser.

Yet it was moved that although chasing in Park bee by the statute made felony, yet the offence may bee made a Trespasse at the pleasure of the party. *Sacombs* case.

130. A man condemned in debt payed part, and the Plaintiffe made acquittance, *viz.* received 10*l.* in part of a more summe, wherein the Defendant was condemned by judgment, before the Justices of *Nisi prius*, where judgment is alwaies in the Banck. *Tenus*, that it is no good Release to have an *Audita querela*, if Execution bee after sued of the intire, for there was no such judgment.

And this diversity put by *whorewood*, If I release all my right in white acre, which I purchase of such a man, where I had it by descent, yet it is good, because white acre is named certaine, and the rest surplusage: but if it be of all his lands which he had purchased; it's otherwise, because generall and uncertain.

131. An appeal of Murther against *Wainford*, the writ was to answer *A. B. alias dict. A. C. frat' & hered'* of the dead: the defendant was disch. because the name of the brother which inabled to the appeal was in the *alias dictus*, for

the *alias dict'* is not any part of his name. The count was, The Defendant *percuss'* 1 day of May, &c. whereof he languished at D. three weeks, and there died, & *sic defend' die & anno prædict' murdr'*, &c. *Quære* because *die prædict'* was the day of the wound, and not of death.

132. *Cockerell* was sued upon a simple Obligation *per Survivor*, he pleaded payment, and re-delivery of the Obligation in place of acquittance, and re-taking by the Plaintiff and so not his deed. *Tenus* no plea. For first, he which pleads payment in the same county, ought to rely upon the *Debet*. Also a simple Obligation may not be discharged without deed; for arbitrement is no plea, and in annuity payment is no plea, for a mischief shall be suffered rather than an inconvenience that a nude averment shall discharge a deed. Contrary, if it be with penalty, or the annuity clause of Distresse, and the deed re-delivered is no acquittance, because there wants words of acquittance. Also a second delivery of a deed, which takes effect at the first is void.

133. Tenant in tails discontinued, and retook an estate in Fee, and after made a Lease for yeers, rendring rent and died; The issue before he entred upon the termor, or receipt of the rent, levied a fine of the land; and holden that the Grantee shall not avoid the Lease, for because the rent reserved may be a recompence to the issue, the Lease is not void, but is at his election to affirm it. And there by *Bromley*, that if Tenant in taile infeoffe his issue, who at full age makes a Lease for yeers, and the father dies, the son shall avoid the Lease, as *Littlel.* put, *que il serra Rent Charge*.

134. Condition that for default of payment of Rent the Term shall cease, it behoves to demand the rent upon the land; Contrary, if it be reserved to be paid *dehors*, *per Shelley*.

Hill. 52.

135. A Parcener let that which appertained to her, after upon a *partic' faciend'* brought against the Lessor, too
lit-

little is allotted to his part. *Per* some there is no remedy for the Termor; *Quere* if the partition had been without writ.

Pas. 34 H. 8.

136. The King granted a License to transport Bell me-
call *non obstante* any statute made, or to be made. *Baldwin*
and *Shelley* held, that the dispensation for statutes made af-
ter is void, because before the law is made, also the Gran-
tee is a party to the statute. But the King may dispense in
things to come wherein he hath inheritance, as subsidies or
taxes, *Quere*.

137. *Per Broml. & Shel.* if tenant by Knights service make
a gift in tail render' 10 shill' without any more, yet the Do-
nee shall hold as the Donor held, for the law creates that,
Quere.

Trin.

138. A Parson made a Lease for forty yeers, to which
the confirmation of the Patron and Ordinary was annex-
ed for twenty yeers: some held it good for all, others *contra*,
Fitzwills case.

(53.)

139. *Quere* if he in remainder be in possession according
32 H. 8. cap. 9. that he may acquit a pretended title, viz. *si*
particul' estate a remain' soient come un a ce' purpose.

140. In Attaint it was agreed for law, that a will of land
devisable by the Common law is good without deed, and
that the Plaintiffe in Attaint may not produce two witnes-
ses, nor the ancient may not depose farther matter, and to
that purpose the witnesses were examined if they deposed
at the first as now; otherwise of the Defendant: And it
was said to the Jury that they ought to find accordingly
if the evidence were pregnant, which induced the first ver-
dict, although it be false, for *homines sunt mendaces, & non*
Angeli, *Inter Rolfe & Hampden*.

Information against *Richards* upon 4 H. 7. cap. 9. for im-
porting *Gascoigne* wine in a strange ship; the Defendant
pleaded as assignee of part of a License, and shewed not the
Letters Patents, nor the life of the Patentee, neither

D 4

shewed

shewed the deed of Assignment; but averred a custome amongst the Merchants to assign by paroll only. Also after the said Licence the *stat. 3. H. 8.* enacted, that the *stat. 4 H. 7.* should stand in force; So that from thenceforth no man shall presume or attempt to do any thing contrary to the effect thereof. *Quere*, if that takes away the Licence before. But for insufficiency of pleading judgment was given against the Defendant.

142. Tenant in taile before 27 made a feoffement to the use of his wife for life; and after her decease to the use of his son in fee; the statute is made, the husband and wife die, his issue enters, he is not remitted, but his issue shall be remitted.

143. Tenant in taile before 23 H. 8. made a feoffement to the use of himself and his heirs, the Feoffees granted a Rent charge, the statute is afterward made, Tenant in taile dies, the issue enters, hee is not remitted to the taile to avoid the Charge, Adjudged between *Simmons and Chapman*.

Pass. 35 H. 8.

(55.)

144. The Lord Borough Tenant in *Capite*, suffered a recovery to the use of his sons and his wife, and the heirs of the bodies of his sons, without limiting any remainder over, the son died having issue within age, and notwithstanding the *sta. 32 H. 8.* it was adjudged that the issue shall not be in ward during the life of the mother, for the ancient Reversion remains, and the father donor held of the King; and not the sons, as they should if there had bene a remainder. *Tenus* also that whereas the Lord Borough was seised of land in possession & in use, covenanted upon the said marriage, that his son immediately after his death shall have all his lands, according to the same course of inheritance that then stood, and that all now or to be seised, shall stand seised to the uses aforesaid; and it was holden to be but a covenant, and that it altered not the use of the father of the

Fee

Fee presently; so that for no cause shall the issue of the Son be in gard; *Quare si les parolls suiffont uvera & remaind al firs.*

145. Two Parceners of an Advowson, the youngest within age, and in Gard, The Lord intermarried with the eldest; the Church being void he presented in both their names, after the youngest came to age, and the Church again void: It seems the eldest shal present if the yongest wil not join, for the last presentment was indifferent, *Quere.*

146. A *Quare impedit* was abated because the Plaintiff was made a Knight, and yet compellable; *Quere* if he shall have a new writ by Journies Accompts.

147. Judgment upon a writ of Annuity was, that the Plaintiff shall recover the arrerages before, and hanging the writ of *q' attingunt, &c.* and in summing there is a quarter more then is incurred. Also it was shewed to the Court before the verdict that the Jury had eat and drank at their own costs, and upon those matters Errour was brought; But because the day of writ brought, and also of the Judgment is put in certain; it is apparent to how much the arrerage will amount; And the Summing which was the office of the Clerk is not of necessity. Also the eating of the Jury at their own costs, although it be finable, yet it shall not induce affliction, and so the first Judgment was affirmed.

148. Trespasse, Demur', if the Son may avoid the forfeiture of his Father being deafe and dumb.

Trin. 56.

149. A Lease of land and sheep, the sheep died, or part of the land is surrounded with the sea, the intire rent shall issue out of the residue, by divers, but some held the contrary, because it is the act of God: And if a part be evicted upon elder title it shall be apportioned.

150. A Writ of right was brought against husband and wife, the wife being within age is admitted by her next friend, the Tenants vouched, and joined issue upon the

meep

meer right; and after made default; Judgment shall was given against the Vouchee and his heirs, and against the Tenant and his heirs. *Nota.*

151. A. is obliged that B. shall pay 20*l.* to the Obligee, the Obligee accepts a horse of B. the Obligation is discharged, but otherwise had it been if the payment had been to a stranger to the Obligation.

(57.)

152. Read brought a debt upon an Obligation, where the condition was to performe Covenants, Grants, and agreements, in an Indenture of Lease, The Defendant pleaded the Indenture, and that after, *viz.* such a day five years after, the Plaintiffe by deed here shewed in Court released, &c. *ad primum diem Maii, qu' esset in anno Domini, &c.* all Covenants in the Indenture. Judgment if the Action. The Plaintiffe demur' and adjudged that the plea is not good, because he had not alledged that till the release he had not broken any Covenants; for if the Obligation be one time forfeit, a release of Covenants after shall not dispense with that.

Mes si per release les Covenants sont dischar' durant aucun infrient, the Obligation is then discharged *Quia accessorium.* As in cases of Redisseisin, &c. *nomine pena, &c.* *Per melior. opinio.* that the words *ad primum diem Maii qu' esset, &c.* are void words, and the premises shall stand as a present release, for the subsequent words may qualifie and abridge but not destroy the premises. And a release is not available but for a right, or an Action which one had at the time of the release; for it is contrary to the nature of a release to take effect in time to come.

Notwithstanding by *Baldwin* peradventure, if the heir of the Disseisee deliver a writing as an Escrow, to be his deed after the death of his father, it shall bee good (*R. Quere* because of the relation) and holden by *Bromley*, and *Shelley*, that by a release of covenants, the Demise and all agreements, as Reservation of Rent, which

is an agreement of both, is released. But Baldwin denyed it.

Mich.

153. Stat. 1 Rich. 3. gives authority to *Cestui que use* to make a Grant, Lease, Feoffement, *Per Justic.* if *Cestui que use* for life, where the remainder is over in taile, makes a Lease for anothers life and dies, the Lessee is but Tenant at sufferance; for the Statute intends, not that it shall be a Discontinuance, but such an estate as he may lawfully grant; Case Lord Zouch. (58.)

Cestui que use made a Lease for 20 yeers the first day of May, to begin at *Midsum.* The Feoffees they made a Lease the second day for 30 yeers to begin at *Midsum.* also: And holden that it is not a surrender of the first Lease, because it was not yet begun, although it bee so in the Lessee that hee may either give or forfeit it. But it shall inure as a confirmation for 20 yeers, and as a new Lease for 10 yeers after: If *Cestui que use* make a Lease for yeers, and after make a Feoffement of that, and othor land, and livery in the other. *Quere*, because he neither had in possession nor in use according to the statute, if good for that in Lease. *Cestui que use* in taile made a Feoffement and died, as it seems the franck-tenement shal not be adjudged in Feoffees with regresse. *Saunders Case.*

Trin. 36 H. 8.

154. The King had the honour of *Gloucester* partly by descent, and partly by attainder of the Duke of *Buckingham*; The tenants of the Honor held not in *Capite*, nor the King shall not have the prerogative of other lands, as was decreed in the case of the heir of *Arthur* of *Clopton*, in Gard for tenure in Chivalry as of the said Honor.

155. The Bishop of *Bath* and *Wells* made a Lease for life, and after granted the Reversion, *habend' terr. predict. cum post mortem &c. vacare contigerit usque finem 20 annorum extunc proxim' sequent'* with a Letter of Atturney

to make livery, which was executed and a Confirmat. had; The tenant for life made regresse; the Bishop died; if the said grant be good as a new Lease without Attornment, or if the regresse be a sufficient attornment, *Quere.*

156. The King let to Taverner a Rectory rendring rent; and granted to him to be discharged of all *pensionibus, portionibus & omnibus denar' summis*; and decreed in court of Augmentation, that the King shall find the Curate; and if a common person let without such words of discharge, yet he shall find, for it is a spirituall administration, which may not be let; and the service is annexed to the person, and not issuing out of the Parsonage.

157. The Prior and Covent of C. let the Mannor of D. *Cum pertinent' una cum columb' ac reddit' tenent' decim' garb' finib' heriot' perquis' cur. & aliis omnib' proficuis, advocac' eccl' & wrecc' excep' & reserv'.* Per some the word (*ac*) conjoines the last words of that which is let, but that may not be first, for then *aliis omnibus proficuis* which came after is excepted which is repugnant, also the nature of a forspis is to restrain part of a thing before spoken of, whereas *decim' garb'* is a new thing. *Case Wilshire.*

(159.)

158. In a debt upon an Obligation brought against Harwood, he pleaded *non est factum*, and so at issue, and before the day of the appearance of the inquest, the rats had eaten the labell of the Obligation per the negligence of the Clerk, in whose custody it was, &c. upon which the Jury were charged by the Justices that they should find that it was the deed of the Defendant at the time of the plea, and give a speciall verdict, and so they did. 2 Ed. 3. 22 *simile.*

In a Repleg. the Plaintiffe was Nonsute and *'Return'* *habendo* awarded which was returned *Averia clongat'*, for which in *Withernam* other beasts were delivered: yet by the Court the second deliverance shall be of the first.

Paf.

159. The Lord Latimer devised to his wife the third part of all his Goods and Chattels; *Quare* if they shall be intended as they are after all Debts and Legacies paid, or if the intire; And if three parts of the Debts of the Testator shall also passe. The word *mensils* shall not passe plate and jewels, *per Justic.* A Devise to the daughter 500*l.* towards her marriage, If she die before marriage, *per* greater opinion her Execut' shall have it. *Contra* if the words were to pay at the day of her marriage or at the age of 21 yeers, and she die before both, as *tenuis* 3 *Elix.*

Paf. 28 *H.* 8. (60.)

160. *Tremynnard* Burgesse of the Parliament was taken upon an Exigent after a *Capias*, and now upon a Writ of priviledge from the Parliament the Sheriffe let him go at large.

(61.)

1. *Tenuis* that the priviledge is grantable *non obstante* the execution, for the King and the Realm had interest in the body of every Burgesse, and the Common-wealth shall be preferred.

Trin.

2. That the party after the Parliament may be taken in execution again, for the Plaintiffe shall not be prejudic' of his execution by Act of the law, which makes not wrong to any.

3. Admitting that the priviledge should not lie in that case, yet the Sheriffe shall not bee charged, because he is sworn to execute processe, but he is not bound to take notice of the law.

161. A Prebend in a Cathedrall church let parcel of his prebendary for yeers, and the Dean and Chapter confirm' and divers held, that it shall not bind the Bishop, who is Patron and Ordinary of every Prebend, *Quare. vide* 8 *Ed.* 3.

162. *Whorewood* and his wife were Joint-purchasers of 60*l.* land, and the husband seised of 300*l.* land more, devised

vised that his wife shall have the 3 part of the intire, with her Jointure by the Assignment of the Executors, and the wife waived her Jointure, and demanded the third part of the entire as a Legacy, viz. 120. l. and the third part of the residue for her dower, viz. 80. l. And it was decreed that she shall have the third part of the entire, and over that 40. l. of the residue for all her dower.

163. Upon information upon the statute of plurality of Farmes, and that the Defendant had seven lying in seven towns in 4 Hundreds in *Essex*. Concord if there be 4 hundreders returned which have land, or abide in any of them, it sufficeth for the challenge for the Hundred.

164. *Tenus*, that a plaint in Assise of four acres of land and a house, it may be abridged for the house, because the Jurors had not the view of that, and it sufficeth if the Jury have notice of themselves, although the Sheriff cause them not to view it: (62.) For the matter is, if they can put the Plaintiff in possession if he recovers. The examination of the view was, by the true speaking of the Jury upon their oath, & holden that if a Termor after surrender continue possession and pay rent to the Lessor, holden that it is no Disseisin except at the pleasure of the Lessor. Three were named *conjunctim & divisim* as Attornies to make livery, and two did it the third being present, but said nothing; *Quere*. But it was agreed if the third had been absent it had not been a good livery.

Expliciunt Anni Regis Henrici Octavi.

Incipi-



Incipiunt Anni Regis Edwardi sexti:
Anno Tertio.

Mich. 65.

A Parson granted an Annuity *de Rectoria sua* to *A.* and his Assignes for the life of the Grantor *pro consilio suo impens. tantum*, and *A.* assigned that *J. S.* who brought an Annuity, and counted that *A.* was seised in Demean as in franckenement, &c. Defend' demur' if it may bee assigned: Also it was moved by Pollard that an Annuity lieth not because of the Count that the Grantee was seised in his demean as of franckenement, which shews an election to take as a rent seck,
Quero.

166. Wast is assigned in *amputando & decapitando 40 fraxinos*, &c. and upon Demurrer adjudged wast.

Error Assigned in Assise of 40*s.* rent. 1. Because *B.* in the association was also Attorney to the Plaintiffe.

2. Because at the day of Assise one Defendant appeared & *nihil dixit*, and the Assise was adjourned into the Exchequer chamber, at which day the said Defendant made default, and upon that default the Assise awarded, whereas it should have been awarded upon the *nihil dicit*.

3. The Plaintiffe and Defendant varied in the land put in view whereof, &c. and the verity is not inquired by the Jury.

4. Because the Plaintiffe was admitted to abridge 20*s.* where the rent is intire; and is not as in case of land.

5. Also notwithstanding the said abridgement, the ver^s
dict

dict and Judgment was *ne redditu in querela, viz.* of the intire.

6. After 5 sworn upon the principall, then the Assise remaind' *pro eo quod nihil habuerunt infra hundred. de A.* without saying *infra quod, &c. quodque non fecerunt visum, &c.* where if 4 hundredors are sworn upon the principal it is sufficient.

7. The rejoinder was *in nullo est erratum*, where the first error assigned is matter of fact, and issuable of one and the same person. But holden very good, for he agreed that it is one and the same person, but yet denyed it to bee an Error. *Signior Windsors case.*

(66.)

167. The words of a Lease were *& non licebit* to the Lessee to alien without assent of the Lessor *sub pena forisfac'*; It was agreed that this is condition. But that the restraint continues but during the life of the Lessor and Lessee.

168. Debt was brought in the Exchequer by Serjeant *Minors* against the Sheriffes of London upon an escape *A.* And counted that he was in execution in Ludgate in the time of 4 Sheriffs, till the Defendants 15 Decemb. 3 Ed. 6. &c. Defend' said, that long before the said 15 Decemb. 3 Ed. 6. viz. 23 September, 1 Ed. 6. the said *A.* being in custody of *J. and C.* then Sheriffes, upon the said Execution, they at Lambeth in Surrey let him to go at large, &c. *& hoc &c. Plaintiffe demur.*

1. Because it may be before the 3 of Ed. 6. and yet the year after *J. and C.* were out of office.

2. It is repugnant that the said Sheriffes suffered him to escape in Surrey hee being then in their custody in London.

(67.)

3. Also it ought to be alledged certainly that he was in their custody in Surrey, or otherwise if there be not special matter, as the commandement of the King, or his Counsel,

counsell, or chamberlain by writ, it is an escape.

4. Also they excuse not their own wrong by traverse, nor by confession and avoiding: But this put upon another, whereas every one shall answer for his own misdeed, *Escape* 45. that such matter is confessing and avoiding, 33 H.6. it is a good excuse, that escape was by sudden fire, or enemies. *Contra* of Rebels. So also a Gaoler may not him aid of the escape by error in the Record, upon which the prisoner was in execution, because a stranger to that, 21 Ed.4. fol.28 acc. & M. 14 Ed.3.

169. A man made a Lease for yeers to two, provided, that if they die within the term, that the term shall cease, the termors made partition, and after one of them died, *Tenus* that his Executor shall have it, because there is no occupant in this case, and it shall not cease during the life of his companion. But if it were a Lease for life it should be determined. *Farringtons* case.

170. In debt the Defendant pleaded a release of the Plaintiffe in Bar; and at the issue upon *Non est factum* the Defendant confessed that it was not the deed of the Plaintiffe, and then the Plaintiffe had judgment presently, and *Defend' Capiat*. 33 H.6. and he was but amerced. But for denying his deed, the judgment is *quod capiatur*, although he be not convicted by verdict.

171. Upon *Extend' faci'* upon a statute *Staple* the Sheriffe extended the land of the Defendant, and sold the goods, and returned the extent in Chancery; And a writ of Prerogative issued, that the Sheriffe should first levy 100.l. for the King, and driven to execute the writ of Prerogative; for it's holden that till the *Liberat'* no property is in the Conusee. R. *Quare*, for by many of the Temple, the extent seileth them into the hands of the King to the use of the party, and upon that they are in custody of the law, in priviledge of all other executions.

Hill. 5 Ed. 6. (68.)

172. Tenant in taile infeofed his issue within age and

B

his

his wife, the issue died having issue, he is remitted. *Quere* because of the Feme,

Pas.

173. An Indictment was *quod A. apud D. insult. &c. & ipsum murderavit* without *ad tunc & ibidem*; also the Indict' was *Barksb. Inquisit' capta ibid'* without shewing where the Inquisition was made, Defendant outlawed; and the outlawry reversed for the same errors: (69.) And holden that the word *murderavit* implies *ex malitia premeditata*, as *furatus est* implies *felonice cepit*. Also holden that a Justice of peace may inquire of murder, because it is felony *non obstante opinio Fitzh. Backlers case.*

174. A Parson makes a Lease for yeers or grants a Rent charge to begin after his death, the Patron and Ordinary confirmed it. It seems good to bind the Successor, because the charge is present, although it take not effect in the life of the Grantor, *Quere.*

175. Three brothers the middle of them was slaine, and the eldest died within the year, and no appeale began, and Demur' if the youngest may have an appeal.

176. Four women being coheirs of one *Harwell*, three of them and their husbands prayed a Covenant to levy a Fine against the fourth and her husband: which Conus' of the tenem' to be the right of one of the three sisters as that which her husband and shee, and the other two husbands and their wives had of their gift; The Conusees rendred to the wife of the Conusor in taile, the remainder to three women Conusees in taile, remaind' *vestis bered' Harwell*; The wife Conusor died without issue, and the three husbands and their wives now brought a *Scire facias* to execute the remaind. *quare* the remaind' *non debeat, &c. Vide 1 H. 5. 8.* that a *Scire facias* lieth not to execute a remaind' in that case, for the Conusees as that, &c. they had see executed, and then it is a void limitation of a remainder in taile to themselves.

177. Tenant

177. Tenant in ancient Demcan vouched one at the Common law, within the same county, because the Vouchce had nothing to be summoned within, &c. And upon Demurrer the Voucher adjudged, and day was given in the Bank to determine the warranty: And a Summons *ad warrant* was warded to the Vouchce in the forain county, who entred into warranty, and vouched over into another forain county, &c.

178. A man infeoffed two upon condition to remake a Lease for life to the Feoffor, the remainder in fee to a stranger, the one sole made an estate accordingly, and *per* many it is good for the moiety by dispensation of the party who made the condition, *per* his acceptance of the estate.

Trin. 6 Ed. 6. (70.)

179. In a Trespasse against *Isham* Keeper, for entring into a Park and depasturing swine, and for entring into one meadow and taking of grasse, &c. the Defend' pleaded in Bar to which were divers exceptions.

1. Because he had pleaded a grant of the office of a Keeper for life, by virtue of which he was possessed, whereas it was a frank-tenement.

2. Because in his Bar he made three severall Justifications, and pleaded *semper, quod J. S. fuit seist. &c.* and granted to him the office, and said not *prædictus J. S. se contra*, because it shall be intended divers men. (71.)

3. He justified the depasturing of swine as appendant to his office, whereas swine nor goates are not commonable.

4. He had pleaded a grant of the office, and made prescription to have things incident, &c. and said not that hee was seised by force of the grant before hee made his prescription, for otherwise he may not prescribe.

5. Before his prescription *non dicit* that it was an anci-

ent Park, which exception was the principall cause that Judgment was given against him. For matter in law it was doubted, if the Defendant being Keeper but for life whether he may prescribe in him and his predecessors, for he cannot say, and those whose estate he had, &c. or if hee ought to prescribe in a place, as to say *quod habetur talis usus* in the said county that every Keeper, &c. As Tenants at wil may prescribe *quod talis habetur usus* in such a town, &c. but not in their persons. Yet it is said that the prescription of the chiefe Justice in giving offices is generall, that every chief Justice for the time, &c. yet he is an Officer at will of the King. *vide 11 Ed. 4.* the like prescription of a Serjeant to be sued by originall and not by Bill. The like *21 H. 7.* for Bar fee by the Sheriffe. And holden that a Lord of a Mannor may prescribe to have a hariat upon the death of the tenant for life, for although an estate for life be interrupted, others have continuance by which the prescription is made. But the Tenant himself may not prescribe. *Tenus* that the Lord may dispark, notwithstanding the grant of the office; But not ear it if he had granted the herbage. And holden that by grant of the office of a Keeper incidents pass especially if the words be *in tam amplis modo & forma quod A. habuit*, which are as available as expresse words. (72.) Also it was objected, that a Keeper of a Parke might not prescribe to have feyn, *viz. primam tonsuram prati*, for it is a frank-tenement, and an Assise lieth of it, and then for the mischief of obedience, &c. which shall not be suffered but only in case of a parson. Contrary of an office of inheritance. And it was argued, that an Advowson may not bee appendant to the services but to the Demean.

Mich.

180. *Vide* the form of the Serjeants writ, the inscriptions of Annualls were, *Plebs sine lege vuit.*

181. One learned in the law took notes of the Will of one sick, and after writ the Will, but before he shewed it

to the sick he died; And yet by the opinion of the Court it is a good will in writing within 32 to convey soccage land. *Idem* 5 *Elizab.* although written after his death. *Sackvills* case.

182. The husband alone levied a Fine with Proclamation of his wives land and died, and five yeers incurred without entry or action of the wife; she is bound *per Curiam* by Stat. 4 H 7. And the Stat. 32 H. 8. aids him not although it limits not any time peremptory, for that speaks not of a Fine with Proclamation.

183. A man levied a Fine at the Common law of land in ancient demean of the nature of Gavelkind. The course is not altered, *Quere*.

184. A Parson made a Lease for yeers after the Patron granted *proxim' advocat'*, and after the Patron an Ordinary confirmed the Lease, and the Parson died: he that had the next avoidance presented A. and he was discharged of the Lease; after the Patron granted the Advowson in Fee, and A. died, and the Grantee presented B. If hee shall avoid the residue of the terme, *Quere*; and note the alienation was after the death of the Lessor.

185. Adjudged that an Action upon the caselies, for saying, *w. Kempe* will bee a bankrupt within this two daies.

73.

186. Upon a writ of Partition upon 32 H. 8. the Sheriffe returned the partition made by 12 lawfull men; one of the parties surmised an inequality, and prayed a new writ, *Quere* if he shall have it.

187. *Eps.* surrendred an ancient Lease of the possession of a Priory, and took a new lease for 41 yeers, within the year 31 H. 8. of Dissolutions rendring the ancient rent; and after the Patentee of the King avowed upon the Lessee for Damage feasant, Demurr' if it bee a good Lease.

188. Exceptions to an information upon the Will of the Lord Boucher.

1. That the will was not found by office, and the Attorney of the King may not intitle the King to the frank-tenement by suggestion without matter of Record inducing thereto.

2. The information is *quod dedit manerium O. &c.* by his Will, which is false if he had but an use; for a Devise is not within the stat. 1 Rich. 3. *de don. de posses* as it is of a feoffment of *Cestui que use*. And being before the stat^s of Wills, it shall not bee intended that he might devise the land it selfe, without pleading the custome specially.

3. Also in his Will he requested the King to accept his Mannor of *O. &c.* for the 500 pounds which he ow'd him, but those he gave not to him, and therefore the acceptance ought to be shewed.

4. The words are over, paying to his Executors *ultra*, so much as the King please, towards &c. and this word *paying* in the Will is a condition, and ought to have been shewed performed by the payment of some sum.

5. Also a use or possession of a frank-tenement may not be vested in the King without matter of record.

6. Also after his will made his Feoffees by his commandement made a feoffment to the use of himself for life, remaind' to cistr. uses, which was a countermanding of the Will, for a Will cannot take effect till the death of the Testator.

189. Lessee for yeers devised his entire term to *A.* provided if he die while *J. S.* is living, then the residue shall remaine to *J. S.* *A.* aliened and died, *per Hales* and *Mounzague*, *J. S.* is without remedy. *Vide Welkdens case.*

Debt by *Patridge* against *Grocker* upon stat^s 32 of buying titles. *Plowd. Com.*

(75.)

190. An Action upon the case was brought by Bridges, for saying B. is a maintainer of thieves, and a strong thief himself; Issue joined if *propalavit modo & forma*, and all the words found besides strong, and the Plaintiffe had Judgment. *Quere* if he shall be amerced for the said addition, for peradventure it shall be an error in Judgment.

191. *Andrewes* brought an Action upon the case, and counted that the Defendant for 20 pound whereof the moiety was paid; and the rest agreed to be paid at a time 3 for which he promised to deliver 400 pound of wax to the Plaintiffe such a day, and at the day he delivered to the Plaintiffe 373 pound of ill wax, and warranted it to be good and merchantable, by which the Plaintiffe was damaged, &c. The Defendant pleaded an agreement or concord made between them after for the 26 pound of wax, as well for the insufficiency, as for the rest not delivered, which agreement or concord he had paid or performed, & the Plaintiffe accepted that, &c. Judgment &c. Plaintiffe demur because the deceit was not answered; (76.) And the Bar was holden good, because a Concord executed is a good Bar in all actions where only damages is to be recovered. And arbitrament is a good plea before it be executed, because an action of Debt lies upon Arbitrament. And holden that the deceit *supra*, is not materiall to be answered, because the warranty of the sufficiency was after the Contract, and so no confidence. Also the Count is not good because he had not shewed that the second day of payment was not come, for it shall be intended that it is come, and that the consideration is not paid, where the agreement was for 20 pound; which is condit'.

192. *Fieri facias* issued against *Vincet*, who died, and the Sheriff levied the execution against the administrat'; And the administrators brought a writ of Error, and reversed the Judgment, *Quere* of a writ of error by Administrat.

193. In Dower by the wife of Kettlesby, the tenant pleaded the entry of the Demand' in parcell after the last continuance, and holden that the tortious entry shall abate the writ. The Plaintiffe said that shee entred for a Quarrentine. And holden that shee ought to shew the death of her husband in certaine, and the time of the forty days.

194. In a *Quare impedit* against the Bishop of Salisbury and the Incumbent, verdict passed before the Justices of Assise for the Plaintiffe, accord. Stat. W. 2. cap. 5. Judgment was given before them and a writ to the Metropolitan awarded; and for damage a *Fieri facias* to the Sheriffe the Defendant upon a writ of Error brought removed the record into the Kings bench, and had a *Superedeas* to the Metropolitan made in the Common pleas, after the Plaintiffe sued a *Scire facias* to have execution, because the Defendant did not assigne Errours, which by the course in this writ is as *ad assignand' Error*, upon which the Defendant assigned Errours.

1. Because found by the enquest of Office that the Incumbent was in by the presentation of A. who was not named in the writ. (77.)

2. Because damages were adjudged for halfe a yeer where it appeared that the presentation was not deraign'd within 6 months, and the words Stat. W. 2. cap. 5. are recited *quod si distratio presentat' infra tempus semestre tunc adjucet' dampn' ad valor' medietat' ecclesie per unum annum*, notwithstanding these the Judgment was affirmed; And upon suggestion, that the writ of Errour was brought before the payment were assessed by the Court, and costs according 3 H. 7. c. 10. & 19 H. 7. 20. And a writ of Execution awarded to the Gardian of the Spirituality *sede vacante* of the Metropolitan. Exception was, because the writ of Errour was, *in recordo, processu, & redditione judicii loquel. que fuit coram nobis &c.* which was false.

195. The King let the see of Richmond with all Deodands

dands which should happen within it to C. for yeers; And after he granted all Deodands generally to Amne: the term of C. expired, and the King made a new Lease to C. as *supra*; By *Mountague* the Almner shall not have the Deodands against the Parentees, for his Grant was void because the Lease of C. was not mentioned in the Patent. *Omnia que movent ad mortem sunt Deodands.*

196. The King let the Scite of an Abbey & *omnia terras, prata, pasturas & subscript' cum pertin' dicto Monaster' pertin' &c. viz.* such a thing, & such, &c. *Tenus* that (*viz.*) shall have relation to the *subscrip'* only; so that the Patentee shall have aliother lands which appertain to the Monastery, and not to *omnia*.

197. Adjudge in Assise that where Tenant in tail discontinu' to the use of himself for life, the remainder to the use of the heir in tail, the remainder to a stranger in fee, and died, and the heir entred, stat. 27 H. 8. is made, and after the heir died without issue It was resolved that the entry of him in remainder was congeable, because the heir of the Tenant in tail was not remitted, by the possession executed by the statute.

198. Abbot 29 H. 8. made a Lease for 80 yeers rendring &c. of a wood three miles distant from the house, notwithstanding never in Lease before, but the wood was never spent in the house but alwaies sold; the house within the yeer was dissolved. And the opinion of the Justices was that it is a Lease within stat. 31 H. 8. *ergo*, void.

199. In Attaint the Grand Jury were returned Summoned, by the Sheriffe Cousin to one of the Petty-Jury; But the Resummons and Distresse, & 20. & 16. *Tales*, all were returned by a new Sheriffe, and now full Jury appeared, and the grand Jury was quashed, *causa qua supra*, and the *Tales* at the perill of the Plaintiff; But divers precedents are that such 3 *Tales* shall stand.

200. In Affise the Writ was *de libero tenemento in C.* the plaint was of one house, &c. the Defendant said that the land was in *H.* and not in *C.* Judgment of the writ, *&c.* *Quare* if he need to say and not in *C.* for this writ is but a supposal, *viz. de libero tenemento.*

201. In a *Quare impedit* the Plaintiffe made title by survivor upon a grant made to him and others by *A.* who had *advoc' quart' partis* in grosse, and had presented *B. &c.* and after another as in grosse, & after a third as in grosse, and then the Defendant presented as appendant, and every of them had *advoc' alius quartæ partis, &c.* and that the Church is now void by the death of the presentee of the Defendant: and so now appertaines, &c. The Defendant said, that the intire Advowson is appendant to the Mannor of *D.* the moiety of which he had by descent, and now it belonged to him to present, sans that the said *B.* was admitted and instituted *ad presentat' A.* Some held that he ought to have traversed it *absque hoc*, that in grosse; *Quare*, for the parties conveyed not from one and the same person; *Ideo 20 Ed. 4. 21 & Lib. Entr. 130.* and the presentation was traversed, this issue shall be tryed by the Ordinary.

Hill. 7 Ed. 6.

(79.)

202. An Indenture of Lease had such a clause, *viz. And* the Lessee shall continually dwell upon the premises upon pain of forfeiture; *Per Curiam*, it is a Condition, for the clause is the words of both; so *quod non licebit alien' &c. sub pena forisfacti. Vide de provisio & covenant ensemble.*

203. In a Formedon the tenant vouched one as Cousin and heir of *Townsend*, and prayed that the plea abide, *per Curiam* he ought to shew how hee is Cousin. *16 Ed. 3. idem 15 Ed. 4. contra.*

204. A man made a Lease of a Mannor in which was 30 acres of wood, and also in another place of the Mannor were timber trees; excepting timber trees and great woods: by

by 3 Justices that the herbage and underwoods in the woods shall passe, and so seems to be the intent of the Letter *per paroll grand Mountague the contra.*

205. A man was sued in his spirituall Court for his very tithe, and upon suggestion *de modo decimand'* over 60 years, *viz.* of paying 12. d. onely for, &c. and that hee had pleaded it in spirituall Court and was not allowed, and had a Prohibition, and *per Curiam* if the 12. d. had been a rent issuing out of the land, yet a Prohibition shall be granted, *Quare & vide 8 Ed. 4. fol. 14. per Choke* a man may not prescribe *de non decimando.*

206. In a writ of Right, the writ to summon the foure Knights was returned served, and they appear not, *Hab. corpora* shall issue, and not *alias summon'*; *per Justices.*

207. A writ of Partition was brought by Ra. Howard Esquire, and the Lady Anne Powes his wife, and was abated, and so he was driven to purchase a new writ; and to leave out the word (Lady) and the form was *per Annam uxor' ejus.* And the Plaintiff counted how the feme was coheir with one in taile with the Defendant. (80.) And holden that he needs not shew the beginning of that, because he affirms the possession of the Defendants, and demanded not the land. The Defendant pleaded speciall Bastardy in the wife of the Plaintiff. Judgment of the partition; And holden a good plea without traversing the Coparcenary, and the triall shall bee where the birth was alledged.

208. A man condemned in Debt died, before Execution, and holden that the Administrators are holden to pay this debt upon Record before specialties, and if they are sued upon an Obligation, they may plead recovery against them, which is not executed, and if they doe not plead so, but in default of that Judgement was given against them, and execution had, before the first execution sued; they shall answer of their owne proper goods, for

for by the first Judgement the goods were charged.

209. Questions for the Lord *Willoughby*.

1. If a man let all his medows in *D.* containing 10 acres, where it doth indeed contain 20, if all passe; And it seems it doth.

2. If a man let 40 acres *juxta F.* whereof 10 lie in *A.* & 20 in *B.* and 10 in *F.* if all passe.

3. If a Stewardship may be granted by a common person to be had after the death of the first Grantee.

4. If herbage of a Park be granted, and the Grantee surcharge so that the Deer are not pastured, if hee hath any remedy.

5. Grant of a Keepership, with 3. l. fee of rents, profits, & issues of the Mannor of *S.* by the hands of the Receiver it shall charge the Manor, *per Mountague & Hales.*

210. There is a proviso in stat. 31 H. 8. that Leases which have been examined, inrolled, decreed, or affirmed in the Court of Augmentation, and the decree put in writing and sealed with the seal of the said Court, it shall bee good and effectuell according to the said decree, &c. Lease made within the year, and the ancient rent not reserved, (so that it shall be void except for the proviso) was exhibited in the Court of Augmentation 25 April 31 H. 8. to bee allowed, and so was, and exemplified: But that bare date 28 day of Aprill, which was the first day of the Parliament, *Queere* if it bee aided. It's cleer it had, if it had been dated 27 Aprill. Sir *John Scutloes* case.

(81.)

211. The heir was condemned in an Action of Debt by *nihil dicit* upon the Obligation of his father. And the opinion of the Court was, that the Plaintiffe shall have no other execution but by speciall *Elegit* of all the lands descended in fee to the heir of the said Ancestor, which hee had the day of the Writ purchased. *Peppes* case.

212. The

212. The Colledge of *Graystock* having a Master presentable, and 6 Priests with stipend; The opinion of the Justices that the colledge was not given to the King by the st.¹ Ed. 6. of dissolutions, because the master is presentable, and had not a common seal, *Hales contra*.

213. Sir *John Ailiffe* sued an attaint in *London*, upon the stat. 23 H. 8. and processe continued upon the said stat' & upon the statute 37 H. 8. cap. 5. and this Judgement was given in the Exchequer, and before execution the record was removed into the Banck by *Certiorare*, *Nota hoc*, and now the Plaintiffe prayed Judgment upon that and had it. For by the Justices an *Attaint* is not a *Superfedeas* as a writ of Error is, nor a *Superfedeas* lies not in attaint; and upon the Resum. returned in the Banck served, 20 *Tales* awarded. *Nota*. And because by the said statute the inquest shall not be compellable to appear out of *London*, the Justices caused the distresse to be returned at *Guildhal*, and there they sat in the Maiors court and charged the inquest, verdict passed for the Plaintiff, but Judgment was respited *per Curiam* to be advised.

(82.)

214. Debt against the Executors of *Potter* in the *debit & detinet* for rent incurred upon a term after the death of the Testator; They pleaded that part of the land was evicted in the life of the Testator, and for the residue that they profer', &c. & *uncove prift. &c.* Plaintiffe demurr': but at length accepted according to the apportionment, without costs or damages of either side.

215. A man is obliged to pay 20*l.* viz. 10 pound at *Michaelm.* and 10 pound at *Christm.* he tendred the 10 pound at *Michaelmasse*, and was in pollards which after were abased, which was refused: and he failed of payment of the other 10 pound, upon which a debt is brought, and upon the tender pleaded, &c. Judgment that because in default of the Plaintiffe himself, that he received not the first payment he shall have it in pollards, but the second in sterling, and damages, &c.

216. A man sued *A.* before the Maior of *London*, and a third person being so much indebted to the Defendant, by the custome of attachment he is condemned, notwithstanding this Judgment, yet till execution, the Plaintiffe may resort, and have judgment and execution against the Defendant himselfe, also he may sue the third person for his debt, notwithstanding the judgment unexecuted, which was certified by the Recorder.

217. Receiver who paid not that over at the day which he ought, if hee shall bear the imbursement of the money after. *Quere* if the cofferer refuse to accept after the day, and after it is embased. *Quere* if the Receiver pay not upon Request having money of the Kings in his hands,

(83.)

218. A man is bound in 20*l.* to pay 10 pound at *Michaelmasse*, the Obligee upon tender refused, and after brought a debt upon the Obligation. It seems because it behoves to plead, *unc' prist* that the Obligor shall beare the imbursement.

Pas.

219. Serjeants case : assise *de porcione decimarum* per the Dean and chapter of *B.*

1. Exception was taken because the writ was *de libero tenemento*. But it seemed to the other side to be very good, and the count shall be speciall *de porcione decimarum*, for no speciall writ is given by the statute 32 *H. 8.* and then the ancient writ stands, and there shall be a speciall count. *Vi de Eokenhams case.*

2. Because the Land-tenants were not named ; but it was said to be very good, for tithes are not so precisely issuing out of land as rent is, neither is there other want of those then he that takes it. (84, 85, 86, 87.)

3. Because the plaint is *quadam porcione garbar', &c.* in 200 acres, without shewing the certainty of the loads. But it was answered the taking of part was a disseisin of the in-

sire

ture tithes; the which being casuall and uncertaine the plaint cannot be more certain, and *quadam* is a word of certainty, except it be joined with a word uncertain, as *quidam ignotus*.

4. Because the statute was not particularly alledged, answer was it need not because generall.

5. Because the writ was in *Dominico*, &c. It was said they are tangeable, *ergo* Demean.

6. Because the prescription of the payment made the plea double, to which it was denyed, because the prescription is but an inducement to the right, and the seisin the effect, and seisin only shall not be a sufficient title of a profit appender to charge anothers soil.

7. *Præterea quorum* shall have relation but to the last part. But it was answered to all; but not to better or worser the estate.

8. Because it was not said in *jure corone*. To which it was said, that the statute gives tithes to the King to dispose, *Et sit allegaverit*, &c. It may bee doubted if they may be severed from the crown.

9. Because the name of Baptisme of the Deane is not shewed, *sua dit*, that it is no policy if it be of a thing which he hath with the chapter, for by *intercessant* his name of Baptisme he may have an assise of Distress in time of his predecessor.

10. Because it is not shewed that the tithes are not parcell of the Demean of the Archbishop York *super in tenura B.* according to the Grant. It was said it need not, for it is very certaine to name the land out of which they come
2 Ed. 4.

There were also three matters in law moved.

1. If where the statute speaks but of a person or persons a body Politique shall have advantage of that.

2. If Tithes in their spirituall hands may be demanded in Temporall court.

3. If

3. If Tithes are made Temporall by any words in the Statute 27 or 32 of Dissolutions.

220. Presentment is come to the Bishop by lapse, and after the Bishop is deprived. *Quere* if the Metropolitan or King shall have the presentment.

221. The King by Indenture made a Lease for yeeres of tithes rendring rent to be paid at *Midsummer & Michaelmasse*, or within a moneth after the said feasts in the court of Augmentation; provided if it be behind by the space of one month after any day of payment limited, if it bee duly demanded, that the Lease shall be void. The King after granted the Reversion in fee, the rent is behind two moneths after the feast day; *Quere* if any demand need to be made by the Kings Parentee; and if he ought, whether of the person, or in the court of Augmentation; (88.) and whether tender in any mean day of the month sufficeth. Note, rent reserved upon tithes, and that they passe by the grant of the reversion of them; and so it is not like a sum in grosse.

222. *Eden* who had practised Multiplication, which is felony by the statute, 4 H. 4. cap. 41. he was pardoned by the generall pardon; But *W. accessory* was accepted, as one of those who were in the Tower; It was moved if hee be yet discharged: *Quere* if he may be accessory to a new felony.

223. Assise against 3 the plaint is of 6 acres, and it was found that one is tenant of 2 acres; and disseised the Plain-tiffe of one only, and not of the other; so of the other; so of the third, he is tenant of two acres the residue, and disseised the Plaintiffe and is dead hanging the writ; The Plain-tiffe after verdict abridge the plaint of two acres in which there was no disseisin, and of the other two, of which hee that died was found tenant: *Quere* if he shall have judgement according of the residue.

Trin.

224. Appeal of murder by a woman of the death of her husband

husband, against *Margaret Oldcastle* Spinster, where shee was indeed a Gentlewoman; It seems it is not a sufficient addition: But she was estopped to plead that to the writ because she purchased a *Superfedeas* upon this, and so shee pleaded not guilty; after the Plaintiffe took a new husband; for that, &c.

(89.)

225. *Davies* the 19 *H.8.* made a feoffment to *B.* to the use of *C.* in tail; the remainder to the right heirs of the same *Davies*; and *O.* and *C.* levied a fine to a stranger, who granted the land to the King; *C.* died without issue, after *D.* died, and *B.* sued a Petition to revive the use to the heir of *D.* and the matter *supra*, found, & suit said, that the fee was lawfully granted by *D.* Also the stat. 27. had taken away all interest of the feoffees, for that, &c.

226. *Cliffords* Errour, *Ejectione firmae*, & *bona & catalla ibidem inventi vi & armis*, &c. And counted of a Lease for 40 years to begin at *Michaelmasse* next after the death of *J. S.* and averred that *J. S.* died and he entred, &c. It was pleaded *non ejecit*, it was found *quod ejecit*, and Judgment was given that he shall recover the term aforesaid; where indeed the time is not shewed certainly when hee entred; so that it may be the term is ended. Also he did not shew the time of his entry, for if hee entred before the *Michaelmasse*, after the death of *J. S.* he is a Disseisor, and not a Termor; also *bona & catalla*, nor *vi & armis*, are answered, *per non ejecit* pleaded, and found, but it should have been *non culpable* to that, yet judgment *quod capiatur pro fine*. Also the Plaintiffe was not amerced for a false clamor of the goods, &c. because nothing was found.

Expliciunt Anni Regis Edwardi sexti.

F

Incipi-



Incipiunt Anni Reginae Mariae,
Anno Primo.

Mich.

Iohn Varney made a feoffment to the use of himself and D. his wife, and to the heirs of their two bodies, the remainder to the right heirs of the husband, and they had issue Mary, and the husband died; D. the wife sold the land in fee; Mary and R. her husband joined in a Fine in Confirmation of the estate and Mary died without issue. Now R. and D. and one Edward Varney, as cousin and heir of Mary, brought a writ of Error to reverse the fine, and then to avoid the sale of D. upon stat. 11 H. 7. And R. and D. did not appear; upon which a Summons *ad sequend' simul* issued, which was returned *nihil*, and after they appeared freely with the third note, that they assigned for Error; that after the consance, but before that certified and engrossed, viz. 25 day of March, which was before the Teste of the *Dedimus potestatem* that Mary died. But it was holden that they shall not be suffered to alledge that, contrary to the record and certificate of the Justices before whom, &c. Also it was holden that because the writ of Error was to remove the record it self it was evill, because only the Transcript shall be removed till it be reversed; because they have not the Chirog. in the Kings Bench if the fine be affirmed. Also the writ of Error is brought by Edward Varney as cousin and heir collaterall to Mary, and the taile is determined as appears by her death without issue, and he had not made himself right heir to John Varney, (90.) then it shall be intended that he had issue a son or another daughter, and a writ of Error shall be brought by him who shall have the land, viz. the right heir to him in remainder; by the equiry of 9 Rich. 2. cap. 3. *Quare*, and not by heir generall to Mary. And admitting that fee in
Mary

Mary, yet because expectant upon taile hee which shall demand it when the taile is spent, ought to make himself heire to *John Varney*, for hee shall have it although he be but of the half blood to *Mary*.

(91.)

228. In wast by *Marvyn de succidendo & vendendo, &c.* the Defendant said that the Plaintiffe sold to him *omnes arbores suas crescentes super, &c. quæ possent rationabiliter parcare*. for that he cut, &c. Plaintiffe demur.

1. Because he had not answered the selling.

2. He had not shewed for what the Plaintiffe sold the trees to him; so that he had not *quid pro quo*.

3. Also they shall not pass per the Grant of the Plaintiffe *de arbor' suis*; for not being excepted in the Lease, the Lessor during the term had but a right in them and not a property; and a right may not be granted but by deed, no more of a chattell then of land.

4. Also the Grant is void for the incertainty, when it may be spared; contrary if it had been referred to an arbitrement, because it might be reduced into certainty.

229. *Scire facias* to execute a Recovery in Dower by Tournay, the Tenant pleaded that the Plaintiffe had accepted a rent after the judgment in satisfaction, &c. and a good plea if it be issuing out of the same land; which rent is distrainable of common right; the assignment was pleaded without deed, *Quære*, there it is held acceptance of land which is not in demand in no Bar in Dower per Justices. If before the husband and wife make a Lease per paroll rendring rent, and the husband die, and the wife accept the rent, that doth not affirm the lease, because her assent is needful to the Lease at the making thereof, which cannot be without deed.

230. In attainr the array was challenged because *Mary* the wife of *Sir Richard Mannering Sheriffe*, who had issue in life, is cousin to one of the Petty Jury, and it was demur upon the challenge.

1. Because it was not shewed that he was Sheriff at the time of the making of the pannell.

2. Because it was not shewed that *Mary* was his wife at the time of the making of the pannell, &c.

(92.)

231. In an Indenture of Lease made to one *Dives*, there were these words, *vix.* it is agreed that if any fortune to have the interest, that he or they shall find surety within the year for the rent, otherwise the estate to cease, the Lessee devised his term to his wife, the wife found surety and after took husband, he aliened to *M. Quare* if he be bound to find surety.

232. Waste was assigned in cutting and selling, where the Defendant had but the lops, he may plead no waste made, and give the especiall matter in evidence.

233. The King without words For him and his heires, granted to an Alien that hee should pay but English custome, and holden by all the Iustices that it should bind the Kings successors because of the Kings inheritance in the custome. But otherwise of a Licence; contrary also of an Annuity except it be for executing an office, and then it ought to be limited by whose hands it shall be paid, because the person of the King shall not be changed, *Com. fol. 449. wroths case.*

234. In a writ of Partition it is a good plea that the Defendant had such a writ against the Plaintiff, and judgment to have partition; but doubted whether he shall plead it in Bar or in abatement; because hanging another writ; or as estoppell that he had contradicted the partition; although that appears by the first record that he was all times ready, when they confess the Action, 12 *Ed. 3.* *A.* brought a *Quare impedit* against *B.* and *B.* brought another against *A.* of the same Church, and returnable at one and the same day, and the Court caused one of them to be discontinued.

{235. King

(93.)

235. King Hen. 8. made a Commission to four Lords under the great seal, and signed with the sign manuell to give royall assent to the act of Attainter of the Duke of Norfolk, which Act was indorsed *soit fait come est desire. Dubitatur* if it be a good act; *Quere* for this assent, 33 H. 8. cap. 21. a *Cerciorare* was directed to two Clerks of the Parliament to certifie the act. *Tenus* a void Certificate by one only; Also the circumstances were not certified: But this Commission was suspected because H. Rex was written after the Teste, where it ought to be *supra caput*, and the King was so sick that hee could not write well; and after it was declared by Parliament to be void.

236. Judgment in wast was reversed. 1. Because it was recorded *quod querens obtulit se 4. die per attornatum*, and not named him. 2. The writ alledged seisin to the use of the father of the Plaintiffe and his heirs, without shewing the state of the seoffees, but they shewed it in the assignment of the wast. 3. It is not shewed how the use of the particular estate began. 4. The Plaintiffe shewed that A. held for life, the reversion to him, and said not *spetant*.

237. A man made a Lease to woodhouse, after he let the same land to B. *habend'* from the falling of the first interest. The Assignee of W. took a new Lease, which is a surrender of his first estate (note where is a mean interest.) *Quere* if the term of B. begins.

(94.)

238. King Edward 6. granted to his Aunt the Lady Cromwel, the Mannor of D. &c. *habend' sibi pro termino vite sue si tamdiu nobis placuerit*: after the King reciting the Lease, granted the reversion of that to Sir William Cecil. It seems he may not defeat that estate at will. But it seems the King may of other Mannors which are in his hand.

239. A Replevin by Chafyn against the Lord Sturton, it was enacted 13 Ed. 3. that the Countie of Cornwall should be a Duchy, and that E. the eldest son Ed. 3. should be Duke

of Cornwall, and so every eldest son and heir apparent of the King; King Ed. 3. by his Patent granted the Mannor of *Mere*, which he had in the right of his crown; to be holden inseparably, and to goe as the Duchy. After all escheated to Ed. 3. and by descent came to Hen. 8. who before, and also after the birth of Edw. 6. made a Lease of *Mere* and died; holden that Ed. 6. being made King cannot avoid the Leases. 1. Because it was but an estate at will in the son of Ed. 3. 2. Also the annexing to the Duchy, and limiting how it should goe, was not to the purpose without an act of Parliament. 3. Upon the escheat to Ed. 3. he was seised in his first estate, and a son born after shall not divest it. 4. No livery or *ousterlemaine* was sued by Ed. 6. when hee was Prince, and now he may not avoid it when he had taken the royall dignity, which drowned the Dukedome. *Chafyn* pleaded that Ed. 6. by his birth was seised of the reversion in fee which might not be so long as the term continued, as *Littleton* is, upon disseisin of a Mannor; the reversion is not in the disseisor so long as a particular estate continues: so also if the Prince had title to the reversion, hee had also to the possession; and shall avoid incumbrances, as a son born after descent or escheat.

(95.)

240. A man took one to wife who was in Gard to the King, and had issue, and after 16 years accomplished per the feme, tendred a generall livery, but before it passed the wife died, her issue within age, *Quere* if the husband shall bee Tenant by the Courtesie.

241. In debt by *Oliver Whitton* upon the Statute 1 Ed. 6. for usury, and in his writ he mis-recited the statute, to be made at the Parliament holden 5 Ed. 6. but holden that was but surplussage in the writ; for the declaration ought to shew the cause of the debt, also it was holden at that time by prorogation, &c. Defend' pleaded *quod non recepit*, &c. that is a confession of the contract which is within the statute, and the Court *ex officio* ought to take notice of that

that and give Judgment : And if a Juror takes moneys to speak his verdict, although he speak it not, or a man takes upon him to maintain although he doth it not ; and if a man carries wools to any other place then to *Calice*, although by wind forced thither, yet is it forfeit.

242. Termor avowed for damage feasant, the Plaintiffe said, that he of whom the Lease, &c. was but Tenant in tail who died, and we his issue, &c. The Defendant said that the rent was received, which you accepted after the death of your ancestor, &c. *Tenus* a departure, *Quere*.

(96.)

243. *Seymor* late Admirall covenanted with B. that in consideration that the said B. had conveyed to him certain lands, after his death to levy a Fine to the use of himself for life, the remainder in tail to B. *Tenus* that the use is not changed till the fine levied, for then the covenant may not be performed. Contrary upon a covenant that the party shall have, &c. If a man devise that his Feoffees shall make estate to A. and die; the use changeth before the state is expected.

244. Duke of *Sommerfet* purchased to himselfe and to the Duchesse and to the heir males of their two bodies, which is not an estate mentioned within the statute 27 H. 8. to bee a jointure which shall bee a Bar in Dower, yet resolved that it is within the intent of the statute.

245. *Plus de Cliffords Error*. 7 Ed. 6. fol. 89. upon an indictment in an *ejectione firme*, also it was assigned. 1. Because the writ was in *manerium de A. &c. & unum M. suagium, unum &c.* and the Count of a Demise of the Mannor (*advoca' eccles' reddit' assise, &c. dicto manerio pertin' except' & reservat'*) so that the intire Mannor was not let as the writ suppoeth : *Bromeley* said that it was a void exception of services which are the substance of the Mannor, and not only the *Maneri' pertin'* as the conclusion of the exception is. 2. Also the premises of the deed comprehend all the names in the writ, but the *habendum* is,

habendum maneri without speaking of the house, &c. so that he is but Tenant at will of that: Bromley said that the rest might peradventure be known by the name of the Manor. 3. Also the writ supposeth a demise by the Abbot of C. and the Count is that the Abbot & Covent *Monasti. beati Petri de C. &c.* and so a variance. (97.) Bromly said it was a very good name, because he departed but with a term. Contrary of a frank-tenement; and the Covent does not demise but only give consent; and by all the Justices that the substance of the Action is out of the statute 32 H.8. 30. of Jeofaikes. So it seems of a declaration, for that is no pleading, *quare*. But after upon great deliberation the Judgment was reversed.

246. Errour was assigned because the *Venire fac.* being returnable *Mense Mich.* the *Hab. corpora* was returnable *octab. Martini; proxim. non allocand' unicum esson. vel default'* to the Defend' upon the *Ven. fac.* Also because the *Hab. corp.* was returnable *octabis Martini, Nisi Ed. Mountague capitalis Justic' de banco, &c. die Sabbati, viz. 19 No. apud Guild. all' prius venisset*, whereas the 18 day was the first day of the *utaz*; so to take verdict after the day returnable is an Errour by the Court, 31 H.6. fol. 45. accord. 22 Ed. 4. 49. a fine levied had relation to the first day of the Return.

Pas.

247. The case of the Duchesse of *Sommerset* abridged before fol. 96.

(98.)

248. A writ was to summon the Parliament, without the stile of *Supremum caput*, and it was resolved by the Justices upon great deliberation that the writ was very good, for it is but an addition and not parcell of the name.

249. In a writ of right brought by the Lord *Windsor*, the Plaintiff and four Knights, and eleven of the grand Assise appeared, and the Tenant made default; *per Pronotaries* the default of the Tenant shall only be recorded, and the Jurors

Jurors shall not be demanded, for the Inquest shall not be taken by default in this case as in personall actions. *Vide Glanvill contra.* But the default of the demand' or (after the mise joined) of the Defendant it is peremptory (*vide* 44 *Ed.* 3. 22. husband and wife Tenants, they made default after the mise joined, and the wife was received to join the mise again) but if the party shall have seisin of the land without a pety Cape, in that the books differ. And holden that 16 shall be of the Inquest in a writ of right (R.) *Quere*, for the form of the writ to the four Knights is, *Ad eligend' ex seipss & aliis duodecem.*

250. Two Coparceners are of land in taile, one of them made a feoffment of her part; the feoffee and the other in 18 *H.* 8. made equall partition, it seems, the issue shal not be defeated; because the feoffee was compellable at this day to make partition; although not contrary. Contrary if unequal: Also there if Tenant in tail be disseised and die, and the issue release with warranty, and die; if it be a discontinuance or no *Quere*, *Saunders* held that it is. *Mores case.*

251. Sir N. *Throgmortons* case; two conspired to commit treason and one only executed it, both are Traitors, and so at the Common law before the declaration of the stat. 25 *Ed.* 3.

(99.)

252. Upon a *Fieri facias* the Sheriffe returned, that hee had taken goods to the value of part of the debt, and found not buyers; and although it was objected that the execution is not served, nor the property altered; yet upon this return *vendic' exponas*, was awarded by *Saund. & Browne.*

253. Indictment was that the Defendant *burglariter fregit Ecclesiam in nocte ad depredand' bona parochianorum*; and it was holden Burglary, but the Indictment not good, because it should have been *fregit & intravit.*

254. Clergy was allowed to an accessory in horse-stealing, because the stat. 1 *Ed.* 6. cap. 12. speaks but only of the principall, which shall be taken strictly.

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255. To let one to go at large, which was put in fetters for felony, although he was not indicted, it is felony by the Common law, *de frangentibus prisonam*.

256. Indictment *quod felonice cepit bona cujusdam ignot*, is good, as it is *de morte ignoti*, for it may be brought in a forain county, where the owner is known, *per plures Justices*. *Portman* held a diversity.

257. Justices of Assise hold plea of an appeale of murder, *per stat. West. 2. or 3 H. 7.* and of robbery *per Commission of Gaole delivery*.

258. Indictment of Murther or Manslaughter, *Quere* if good by words *interfecit*, or *murdravit*, without *percussit*.

259. A man made a feoffment to the use of his wife, for life, and after her death to the use of the right heires of the body of the Baron and Feme; the woman had issue and died, the husband survived, the issue may not enter, for the husband may not have an heir in his life.

260. A man gave a mortall stroke 15 Septem. and a generall pardon was granted the 1 of October; the party died the 3 of October; *Quere*, if by that pardon the felony be discharged.

261. A man bought stolln beasts out of any Market, and gave 5 shillings to have election to refuse in the Market to be holden the next day; and then in the Market hee agreed to have the beasts, and payed toll. It was holden that the property was not altered because that agreement relates to the contract out of the Market.

262. Upon the arraignment of *W. Thomas* for Treason because he had compassed the death of Queen *Mary*; It was said that the statute of tryall by peers, had alwaies been in ure; And that an Esquire may bee tried by those who have 40*s.* freehold, or 100 pound goods.

Trim. (100.)

263. If one be an accuser upon his 'owne hearing or knowledg, and saith moreover, he to whom, &c. may be the other Accuser, and so over; and such two were accusors of *W. Thomas*.

264. He

264. He which challengeth a Juror for the hundred, and saith that the place where, supposed to be within the hundred, is within time of memory exempt; hee shall be sworne and shew how it is exempt.

265. It was holden that if the Queen gives land to the honest men of *Ipsington*, rendring rent, although no mention of Successors; yet is is a perpetuall corporation as to the rendring of the rent, but not to another intent, and if the rent be released the corporation is dissolved, for *Cessante causa, &c. Quere.*

266. Upon an *Elegit* the extent shall be by the oath of 12 men, & not by the Sheriff himself, although the writ speak not of Inquisition, and so are many presidents. King H. 8. gave land in taile to *T. Culpep* the remaind' in taile to *Jo. Culpep* and *T. Culpep* is attaint of Treason, which is confirmed by Parliament; and the actuall seisin of the land of *T.* given to the King without office; saving rights, titles, entries, reversions, remainders, &c. to strangers: The King seised the land, and granted the same to one *Bush* in fee. *Tho. Culpep* died without issue; *John Culpep* entred, and was ousted by *Bush*, and he brought a writ of entry *sur disseisin*, and counted that he was seised in his demean as of fee, which was evill, (100.) upon which he amended that, and said, *ut de libero tenemento*; and that by *Fitzh. Nat. bre.* shall maintain an estate for life or in taile. *Bush*, he shewed all the matter, and descent of the Seignory to Ed. 6. and prayed aid of him and had it, and 4 searches in Chancery, during the hanging of which a *Mandamus* was awarded at the sute of *Bush*, upon that the grant in taile to *Tho. Culpep* is only found, and a false date of the Letters Parents, as also the attaint and execution, and that the King was seised in fee, and granted, &c. and after upon a *Melius inquirend'*, the very date found, but the attainter, and execution was found to be before the Grant, upon mistaking the change of the yeer of the reign, upon which return in Chancery, for the apparent untruths in them a *Procedendo*

in loquela was awarded, the Demandant not put to a Petition or Monstrance of Droit, the Plaintiff traverse that the Queen *ne fuit seifit' in Dominico suo ut de feodo*, and issue upon that: and it seemed that the matter in law would maintain that, for the base fee of the King is determined by the death of *T. Culpeper* without issue, for the King was not in point of reverter, because of the mean interest, & the remainder, and entry of the demandant is saved by the act; after the Defendant acknowledged the action; but the Justices would not proceed to judgment, without a *Procedenda* to judgment; according to *Fitzherbert; Nat. bre. 153.* upon that all the matter was again removed into the Chancery. (K.) because there are not words of restraint, *viz. & non ad Judicium*, It seems it needs not.

267. *Marmaduke Constables* case; the grandfather tenant for life, the remainder in fee to the father, they covenanted in consideration of the marriage of the son, that after their death, the land should descend, remain and come to the son, & to the issues of his body; with proviso, that they shall have liberty and make Jointures to their wives, and to pay ransomes, &c. and that whosoever are seised, shall be seised to the said uses, the Grandfather died, the father entered, and after was attaint of treason and executed, the Covenanters sued a Petition of right to the use of the son, supposing them to be disseised, by the father who was attaint; if the use was in the tail by the said Indenture, or not, was the question.

(102.)

268. *Marquess Barkley* Tenant in capite levied a fine, with render to himself in tail, the remainder to King H. 7. and his heirs males, the remainder to his own right heirs: The *L. Barkley* died without issue, the heir males of the body of H. 7. failed, if the right heir of the Lord *Barkley* being within age, shall be in ward to Queen Mary; because the Seignory was suspended at the instant of the death of King

King Edward, and it was resolved *per Justic'* that it was so: for the tenure is now revived, and if the right heir had failed it ought to have escheated. *Ergo* the fee simple was in consideration of the law.

269. The Dean and Chapter of *Winchester* made a Lease for 30 years, after they made a lease to another for 50 years, to begin after the expiration of the 30; and that upon condition of re-entry if he should alien without licence; the second Lessee aliened, the Lessors made a new Lease for 21 years, before the expiration of the 30 years, and that without entry or claim. *Quære* if the Lease for 50 years was void, because they may not enter during the first term: *Quære* also if they may enter without Attourney warranted under their common seal.

Mish. 2 Mary. (103.)

270. Trespasse by *Fulminston* against *Steward*, com. 102. The Lord *Windsor* brought a writ of *Droit* against Baron & Feme, and at the Pety Cape the Feme, and it was prayed that because the Demandant proffer'd not himselfe at the first day, that he might be nonsuit; but it seems he needs not where the tenant had made default. But upon issue joined by battrail or Grand Assise; for there hee ought to appear, &c. and his proffer ought to be entred in the Roll: Also the Tenant was not there the first day to make demand of the Demandant; and then he may not be nonsuit: And the Feme answered and vouched, and after waived that, and joined the mise upon the Grand Assise; & upon the summons the 4 Knights appear' (104.) & one was challenged because he had married the daughter of the Demandant, and so he was drawn out; and a Summons awarded to summon another; and a *Habeas corpora* of the residue.

271. Ward recovered in a *Dum suit inf. etatem* per default after default, and that against an infant, who brought a writ of Error, and assigned for Error, that he was within the age of 21 years at the time of the judgment; and avowed

red not that he had the land by descent; so that it might appear that there was cause that the plea should abide. After the defendant demur' in law upon the said assignment, and best *per Curiam*, and not to rejoin in *nullo est erratum*. But the said except' *supra* not allowed, and the president 6 H.8. accord'. Also the supposall was in the first writ that he was son and heir of A. for that, &c. And upon the said president the judgment after ward was; *quod per error' prædict' Judic' per edict' revocetur*; *trans & in recordo*, for that is an error in deed and not in the record. There holden that an infant shall be punished for contempt; for *frustra legis auxilium invocat qui in legem committit*. As 2 H. 8. outlawry is good against an infant if hee exceed the age of 14 years, 30 H.8. if he make default after the mile joined judgment finall shal be given, 3 H.6. he shal answer a breach of a prohibition of estrepement, 3 H.7. he shal answer a felony, *quia malitia supplet aetatem*, 5 Ed. 2. his non-sure in a *Quare impedit* shal be peremptory, 14 E.3. An essoin of the service of the King failed of his warrant at the day, and seisin of the land awarded. And an infant is bound by every statute law unlesse he be excepted: An infant which prayes to be received, which is traversed, he shall find surety for the mean profits, 5 Ed. 3. The plaint' in an Assise shall be aided by the Court to plead and make his title; *Contra*, if defend. 3 H.6. if he appear upon a Grand Cape, he shall not save his default, 5 Ed. 3. & 34 Ed. 3. appearance by Gardian in a Formedon and pray his age, the Demondant averred that he was of full age, (105.) and praid that he might be reviewed, if at the day he make default, a grand or pety Cape shall issue. There holden that it is not a good return of the Sheriffe, that the Tenant is a feme covert or an infant. But 1 H.6. a good return, that one sued by name of J. Ab. is deposed because it amounts to a death.

272. It was adjudged in an action upon the case brought by Sir John Bonham against the Lord Sturton, for words,

&c.

&c. that the Justices may not diminish damages which were assessed to 500 marks, because the damages of the principall. But in a Tref. per Tripcony of assault and battery, & amputac' manus dext', where damages were assessed but to 40*l*. they increased them to 100 pound, because upon the view of the Court, they may judge of it.

273. A common recovery was suffered to bar the issue in taile, where the warrant of Atturney was entred, *qd' Alicia po. lo. suo*, where her name was Elizabeth, *Quare* if it be amendable *per stat. H.6.ca. 13* the writ of error broughe upon that was *de loquela quæ sunt in curia nost' coram Iustic' nostris, p. r. breve nostrum*, whereas the judgment was given in time of H.8. *Quare* if the record be well removed.

274. A woman Executor took a husband, which are after divorced upon a precontract, and the woman appealed to the Delegates, pendant which the husband administred, after the wife died, *Quare* if the husband be chargeable as Executor of wrongs, and if seiser without receiving or disposing of the goods be an administration or no.

(106.)

275. The King granted the next avoidance to two *conjunctim & divisim*, *Ita quod liceat 2 present' A.* which had the next avoidance, they did according, after granted the Advowson in fee, the Patentee after the death of A. is disturbed of the presentat' and brought a *Quare impedit*, who made title by the presentation of two only, and not by the King, *Quare* if a sufficient title. *Vide 9 H.7.16.*

Amy Townsends case, Comment. fol. 111.

276. *Champion*, Prebend of the Cathedrall Church of *Chichestr*, made a Lease by Indenture, the words are, that he with the assent of R. Bishop of *Chichester*, and of the Dean and Chapter of the same Church, without naming the Dean, &c. *In cuius rei testimon' partes prædict', &c.* and the seal of the Bishop and the Chapter was put to it, *Quare* if a good Confirmation without other words,

277. The

(107.)

277. The Lady *Pomes* elop' but after she and her husband lay together, & that was holden a reconciliation, notwithstanding they never dwell together again, so that if she doth not clope again she shall be endowed.

278. A Man brought an action of debt for damages recovered in *Affise*, the Defendant pleaded in Bar the entry of the Plaintiffe in the land between the verdict and the judgment, *Quare*.

279. *Santalbyn* brought a Trespasse, the Defendant conveyed by 6 descents in tail, *per opinion*, the Plaintiffe may not traverse one of the mean descens; upon that hee confessed the taile, took the last dying seised by prebstitution, and for plea that he which is supposed to be last, &c. infeofed *A.* our ancestor, from whom it descended to him, without that he died seised, and although the feoffment be false, the Defend' shall be true, if he said not true, for hee ought to maintain his first saying, 20 *Ed. 4.* the plea *supra*, when the tail is confessed is holden double; for one answer *viz.* gave not by his deed shall end all.

280. Tenant in tail the reversion in the King, made a Lease for yeers, and after is Attaint of Treason, having issue, *Quare* if the King shall avoid the Lease during the life of the issue.

Challenge in *Affise* between *Nudigate* and the Lord *Darby*, *Comment. fol. 117.*

(108.)

281. The Archbish. *Cant'* had the *catalla felonum de se infra manerium de D.* he committed treason, and after the King made a generall grant to the Almner of all goods *de fel' de se &c.* and after the Archbish. is Attaint; and *Hales* who had a Lease for yeers there is *felo de se*, the Queen granted the term, and doubted whether the Patentee or the Almner shall have it. And by divers Justices the King may grant that which is not in him at the time, as a ward, or the temporalities which shall fall for that, &c. But others

others held contrary of Escheats. (R.) *Quere* because the Attainter of the Archbish. had relation to the offence committed, &c.

282. Wast was assigned in suffering a Mud wall, and a Brick wall to fall, and in a Manger and plancks in a stable loosened and distracted; But because he shewed not that the walls were covered, &c. nor the plancks, &c. were fixed to the frank-tenement; holden no wast.

283. A man covenanted to discharge A. of his wardship of the body at the age of 21 years, or before at the request of A. *Quere* if A. or the Covenanter shall have election, if it shall be before or after 21, request being made before. (109.)

284. Trespasse by *Rugway*, the Defendant pleaded in Bar that the Plaintiffe within age *per* Indenture, &c. and Letter of Atturny, made a feoffment to the father of the Defendant rendring rent, and that after, &c. *per* Indenture, &c. he confirmed *tenement' prædict' &c. habend' tenement' prædict' sibi & hered'*, and that his father died seised and that the land descended to him, Plaint' demur; And it was holden without argument, that the feoffment which he pleaded was void by his own shewing, for being by Letter of Atturny of an infant it is a disseisin: Also hee did not shew the first Indenture where the warrant of Atturny is contained: Also it is not averred that the Defendant had any thing in the land at the time of the confirmation upon which it might inure. Also he pleaded that the Plaintiff confirm' *tenement' prædictum &c. habend' tenement' præd'*, and that is not true that the land should passe here, but where a confirmation inures by way of enlargement; Also it is not averred that the Plaintiffe was of full age at the time of the confirmation. Also he shewed not afore the Indenture of confirmation. After the Plaintiffe had judgement without argument. And a writ to enquire of Damages.

285. A Bishop with the confirmation of the Dean and

Chapter aliened in fee, or in tail. It seems that the King being Founder shall have a *contra formam collatio*, and that although stat. *west.* 2 cap. 41. gives *cont. form' collat'* but to a common person, Founder of an Abbey, Priory, Hospital, or other house of Religion without speaking of a Bishoprick, *Et vide stat.* 33. & 34. & 35. *Hen.* 8. of the Chapters of *Lichfield* and *Wells.* 46 *Ed.* 3. Forfeir 18 for that.

Hill. (110.)

286. *Repleg.* Clerk possessed of a term of Abbey land, assigned it to R. rendring 50 pound per Ann' *fr* R. *excur'* & Assign' *sui tam diu occupav' viriute dimiss'* & R. Grant' & c. *quod liceat distring'* *fr*, & c. (note that it is not a rent service) after the King granted the reversion to Dormay, to whom R. surrend', after D. devised the land to his wife for life, upon which the Administrator of Clerk distrained and avowed as upon the Assignee of R. for rent, The Plaintiffe pleaded that her husband was seised in fee, and devised to her for life, and the descent of the reversion to her son, and prayed aid of him; who came in by the same Atturney. Note, they pleaded all the matter above in Bar; upon which the Avowant demur'. 1. Because it was pleaded that the reversion was first given to the King, *per stat.* 31 H. 8. of Monaster': where the statute gives not any but those which shal be surrendred, relinquishd, & c. and therefore the surrender, & c. ought to be shewed; And upon that the opinion of the Court was that the Bar was incurable. 2. Also after speaking of Attournment 30 *Octob.* 33 H. 8. *vaunt out'*, *viz.* *Et post, viz.* 30 *Sept.* 33 H. 8. which is impossible in time. 3. He pleaded that the reversion descended, which is not true, for till the Feme entred there is not any reversion. 4. Also it was shewed agreement to the surrend' R. 5. Also he took not traverse that the Plaintiffe nor the assignee R. as is alledged in the Avowry.

287. The husband and the tenant in tail had issue two sons, the husband with the wife made a feoffment to the use

use of her selfe for life, and after her decease to the use of the heirs of the body of her husband ingendred, the remainder in fee to *J. S.* stat. 27 is made: After shee and the youngest son levy a fine of that, with warranty of the feme and her heirs, the Conusees render to the youngest son for 60 yeers rendring rent, and they granted the reversion to the wife and to the heirs of her body, and of the body of her husband ingendred; the remainder in fee to *J. S.* The eldest son entred, the feme died, the youngest claimed the lease; seems he had no title. *Cowards case.*

288. It was found by speciall verdict upon nothing by descent in fee pleaded *per* the heir of *Musgrave*; the father who obliged him and his heirs in an Obligation, that the Grandfather made a feoffment to the use of the heirs of his body and died, stat. 27. is made, the father entred and died, and the land descended to the son Des and prayed the discretion of the Court, whether the land descended in fee simple or not.

(112.)

289. A man brought a *Droit close* in ancient Demean, and made protestation to sue in nature of a writ of right at the common law; the Tenant joined the mise upon the mere right, and upon that removed the record by *Accedas ad Curiam*; but because that is no cause, a *procedendo* was awarded to the Bailiffs. In the Register is a writ of *Jurat loco Magn' Assis' in Gavilk' eligend'*, 1 H. 7. 17 E. 3. 7 Ed. 3.

290. Trespasse, the Defendant pleaded in Bar, that before the trespass D. was seised in fee, and let to him and justified and gave colour; The Plaintiffe said that a long time before the trespass B. was seised in fee, and incoffed him, and that he was so seised till by the Defendant the trespass was made, *hsque hoc quod dist'* D. by the Court it is a Jeofaile, and the Jury discharged.

291. A man made a Lease for ten yeers, after by Indenture demised the same land for 10 yeers, to begin at *Michaelmasse*, the first Lessee purchased the reversion; *per*

Cwiam the second Lessee may enter at *Michaelmasse*:

292. *Peres* brought an Action of Debt upon an Obligation, the Defendant pleaded *non est factum*, and gave evidence that upon payment of the money, the Plaintiffe annulled the seal of the Defendant, Plaintiffe demur'.

293. Debt was brought against an Administrat' of Administrat' and shewed not in his Count that the Administration of the first intestates goods were committed to him; and the Defendant also pleaded fully administered of the goods of the second intestate, without speaking of the first, *Quere*.

294. A writ of Covenant by Administrat', and counted that *Windfor* the intestate bargained and sold land by Indenture to the Defendant, and covenanted to make farther assurance, and to deliver evidences, &c. In consideration of which to be observed, &c. the Bargainee covenanted to pay to him a hundred pound; *Windfor* died intestate, his Administrator brought a writ of covenant, & counted how *Windfor* perimplevit, &c. *tamen d. f. licet sepius requisit. &c.* The Defendant pladed a release of *Windfor* of all actions made after, &c. the Plaintiffe said that he was a naturall Ideot *tempore, &c.* and so had been from his birth *usque tempus obitus*, the Defendant traversed the Ideocy, *Quere* if a Jeofaile. The *Venire facias* was awarded where the action was taken, and not where the release was pleaded. *Quere*.

Pas. Tertio Marie.

(113.)

295. Justice *Marvyn* having two sons by divers venters levied a fine of land holden in *capite*, to the use of himself and his second wife for life, the remainder to the youngest son in taile, the remainder to himself and his wife in fee, and after died, the wife survived and after died, if the youngest son being heir to his mother shall have the entire according to the fine, or the eldest the third part by *stat.* 32

H. 8. Quere.

296. *Redman* promised to deliver to *Beck* 20 Quarters of

of Barley at the feast of St. Michael, every year during their lives, and that the Plaintiff shall pay for every Quarter four shillings; *Peck* brought an action upon the case for failing three years, and upon issue of *non assumpsit*, it was found for the Plaintiff: But the Justices were three against three if the damages shall be assessed for the intire time to come, which is uncertain, or for that which is past only.

Debt by *Buckley* against *Thomas*, Com. fol. 118.

(114.)

297. *Hide* covenanted with his Lessee without word of Heirs or Executors, to pay Quit-rents, and died. *Quere* if the Executors are bound to the payment. Divers Justices held that they are not, but bound only the person of the Testator which died with him.

298. In Trespasse against *Parkins*, they were at issue if the land, &c. had been demised or demiseable from time, &c. by Copy as the Defendant would: The Jury found that it had been demised for 60 years by Copy, and once by Indenture for years, and after by Copy to the Defendant, and prayed the discretion of the Court, and by the court the special verdict was void and a new *Venire facias* awarded.

299. *Milburne* sole seised in fee joined in a feoffment with his eldest son, to the use of himself, and to the use of his youngest son for life, provided that he shall permit his eldest son to make Leases for life or years, during his life rendering the ancient rent to the youngest during his life, and after his death to the use and uses *patris & heredum*, after the father sole made a Lease for 21 years, *Quere* if good.

(115.)

300. Assise of frank-tenement in *westminst* and the plaint was of the Philizers office, and made his title in the plaint, and alledged seisin by taking for one *Capias*, the post where they were set at first when they are made officers

put in view. And holden that the Court may discharge him if the cause be without record, but if there be no cause the Court is not a disseisor. But he that took the office ought to farvey that at his perill.

301. Sir *Thomas wyat* Tenant in taile to him and his heir males of his body of the gift of the King, made a Lease for thirty yeers to *Austen* rendring 20 shillings rent, to him his heirs or assignes, and died having issue *S. T.* who accepted of the rent, and after is attaint of treason, and is execured, having also a son in life, and the King accepted the rent; yet adjudged upon information of intrusion, and surmised the land to be in the hands of the King by reason of the attainter of *S. T.* Note that for the inconvenience of two fee simples, in one and the same person at one time, the King is in point of reversion, and so the Lease void, and so his acceptance cannot affirm it. *Nota supra*, the reservation to the generall heirs; but as it seems it shall be intended to goe according to the reversion, otherwise the Lease had been openly void upon the death of Sir *Tho.* the eldest; the Lessee shewed not the Letters Patents of the intail in pleading, *Nota.*

302. *Durine* Lessee for yeers 'among other covenants that he shall not cut any trees, and was obliged to perform; &c. In debt brought upon the Obligation, and breach assigned in cutting 20 trees; the Defendant pleaded that he did not cut the 20 or any of them; Plaintiffe said *quod sucidit 20 prout, &c.* The Jury found that hee had cut ten, yet the Plaintiffe had Judgment, for the Covenant is broken if he cut but ten, and the rest surplusage.

(118.)

303. *Ryder* Tenant in tail devised land, &c. it is not discontinued because the devise takes not effect till after the death.

304. *Quere* if the Bishop certifie in the Court of First fruits and tenths, that a Vicar *contumaciter* refused to pay subsidie for his Vicarage, if the Vicarage bee void, *vide stat.*

stat. 2 & 3 Ed. 6. & 26 H. 8. of Subsidies granted by the Clergy.

305. A man by Indenture renting a former Lease made by him 6 Aug. 30 H. 8. *habend'* from the feast of St. Michael then next ensuing for 21 yeers, he demised the same land to one *Hodgekin*, *habend'* for 21 yeers, from the expiration of the said first Lease, and the verity was that the first Lease was the 30 of August, now in pleading the second Lease being in question, the first Lease was shewed to be made the 30 of August, and issue joined if he demised *modo & forma*, and the Jury found the speciall matter and adjudg that *modo & forma* is not material, but the matter is if he demise.

(117.)

306. *Ibgrave* brought an *Ejectione firme* of a portion of tithes, the Def^r saith that after the ejection supposed, the Plaintiffe granted to him, bargained and sold all his estate, &c. the Plaintiffe maintained his count *sans quod concessit, &c. per* the deed, it is a Jeofaile, and Repleador awarded, for it should be pleaded as a Release or a Confirmation, for a grant is not good to a Trespasser, for it was said that the damages are the principall in that action, and if any part of the term be to come, it is but accessary. Also it is no plea for the party himself that he granted not by the deed, but not his deed, or that hee had nothing at the time, &c.

307. In a second deliverance of a Barge taken at *Gravesend in loco ibidem vocat'* the Kings stream of Thames, the Defendant shewed that he is seised of the Inne called the *George* in *Milton*, and that he and his ancestors, and those whose estate he had, &c. they had used to repair a pannel of the bridg of G; In consideration of which the Plaintiffe being Ferry-man there, and his ancestors, and those whose estate, &c. had from time beyond the memory of man, paid to him and his ancestors, &c. 4 shillings yearly at *Michaelmasse*, and for one yeer being he avowed by prescription

tion to distrain the Ferry-mans Barge in the same place, and averred the Bridge well repaired, and that Barge to be a Ferry Barge, the Plaintiffe demurred.

308. *Cestui que use* devised to his wife for life, *Ita quod non faceret vastum*, the remainder to the youngest son in tail and died, and the stat. 27 H. 8. was made, the wife made waste. *Quere* who ought to enter for the Condition broken, the heir, the feoffees, or he in remainder, or if the remainder shall be defeated by such entry.

309. Tenant in tail made a feoffement upon condition, and died having two sisters inheritable to the tail, the one levied a fine upon Release, with Proclamation to the feoffee of the intire, and 5 years passed, *Quere* if the other be barred of her moiety.

(118.)

310. In *Repleg'* the Defendant made consuance as the Bailiffe of *Sentloo* damage feasant, supposing that *Ed. 6.* demised the land, &c. to *A.* for yeers, who granted parcell of the yeers to his Master, &c. the Plaintiffe said, that long before *Ed. 6.* any thing had, one *J.* Abbot of, &c. was seised in the right of his Church, and with the assent of his Covent by Indenture, date 14 H. 7. witnesseth the said Abbot, &c. demised to him for life *habend' post mortem A. & B.* and they died, and he put in, &c. and they were at issue upon traverse of the Lease of the Abbot, and the Jury gave their verdict at large, which because they might not doe upon a speciall issue, a Repleader was awarded, & *que commencer al avowry*; who pleaded as before, and the Defendant demur' upon the Bar to the Avowry. 1. Because there is neither livery nor attornment pleaded by the Plaintiffe. 2. He had not pleaded precisely that the Abbot demised, but that the Indenture, *testatur, &c.* upon which without argument, judgement was that the Defendant shall have return irreplegable, and a *Retorn' habend'* award' with commandement to the Sheriffe in the same to make inquiry of damages.

311. If by Bill of Trespasse brought in the Kings bench, the trespass be laid in *Middlsex*; the Defendant need not to be supposed in the custody of the Marshall, after issue of not culpable *Hen. 8.* died, and a precept was made to the Sheriff, without writ or Teste of the Chief Justice, to reattach the Defendant, and *Hab' corp'* against the Jury, and very well, & *curia curie.*

312. *Barbor* brought an Action upon the case against *Hawley* for saying, That men cannot have their cattle goe upon the Common but *Barbor* and his children will kill them with B. Dogs. Adjudged that the words will not bear an action.

Mich.

313. *Whittington* being prisoner in *Ludgate* upon a *Capital* in detinue, *Thorver* the Jailor took an Obligation of him and two sureties, with condition to save him harmless, and to discharge his fees, and to render his body at any time upon a summons, &c. And in a debt brought upon the Obligation against one of the sureties, he pleaded the conditions performed, upon which the Plaintiff demur': & holden an insufficient plea, but questioned if the Court *ex officio* be bound to take notice of *stat. 23 H. 6. cap. 10.* not pleaded by the party, and to stay judgment. *Dyer* held that not. 1. Because particular in generall, but of a generall statute as of a generall pardon, the Judges are bound to take notice of that, because it makes a common law, but otherwise of a particular statute if it be not pleaded. 2. But *quare* if the Barons of the Exchequer where the action is brought are Judges of the Common law in that case, of an action of debt brought by a subject of privilege in that Court. 3. Also it is not expressly averred that the Plaintiff is Gaoler, otherwise then that the Plaintiff named himself *R. Tho.* servant to *Richard Chomley Mil' capital' Baron.* al' *dict' R. Tho.* Gaoler of *Ludgate*, which *alias dict'* are intended false, and only put to agree with the specialty; then if hee bee a stranger and not the Gaoler, as the Court

Court may not take notice whether he be or not, the Obligation is good at the Common law, and not void by the stat. 23 H. 6. cap. 10. although the Judges should be bound to take notice of the statute, for the statute speaks only of Obligations made to officers & color' officii. 4. It is out of the case of the statute, because it was not shewed that he was arrested according to the course of the law, according to the words of the statute, but only that he was outlawed at Northampton, tale die, &c. & postea arrestat' apud Lond' & commiss. &c. and shewed not by whose authority, without writ of *Capias utlag.* it shall be unlawfull to arrest him, which shall not be intended because it is not shewn; but in case of felony every one may arrest. (120.) If he had pleaded the statute to avoid the Obligation; *Quere* if the conclus' of his plea should be, and so void, or Judgment if the action. *Quere* also if the statute where it made the Obligation taken in another form then is limited, of any person or by any person which shall be in their wards, shall be intended per the words of any person generall, and void also against the sureties which are at large; Outlawry is one of the seven exceptions in the statute of which the Sheriffe had commandement not to let to Mainprize, yet the Obligation upon that is not out of the statute. *Vide Dive & Maningb. case. Com. fol. 60.*

Appeal by *Read de morte fratris*, Post fol. 131.

(121.)

314. The Lord Mountague brought an action upon the case against the Countesse of worcester, supposing by the writ and Count, that whereas he was possessed of a chain of gold, of the price of a 100 marks, & sic poss. illam tali die apud L. in parochia, &c. casualit' amisit, which came to the hands of the Defendant she knowing that chain to be the Plaintiffs chain, and yet machinans him defrauded, and sold it to divers persons unknown, and the money converted to her own use. The defendant traverse quod non vendidit modo & forma, &c. & hoc, &c. Judgment if the action &c. upon which plea the Plaintiffe demur. 1. Be-

1. Because the plea is but an argument, but *non culpable* had answered to all.

2. He ought to have concluded & *de hoc pon. se super patriam*, because a direct negative, and traverse to the affirm' of the Plaintiffe.

3. The Plaintiffe is at his election to have this action because of the misdemeanour supposed. Dyer held contrary, and first he held that it should have been *ad valentiam & non precii* of a dead chattel (*Fitzh. N.B.* one or other good) as by the Register of a live chattel the form is *cepit & abduxit*, but of a dead chattel *cepit & asportavit*. 2. Also it is impossible *quod possession' amisit*, *Quere*. 3. Also he supposeth fraud, where was neither privity, nor confidence, but appears she came to the chain by finding. 4. Also an action upon the case lieth not because he had his remedy by action of detinue, for he had not shewed the sale to bee in market overt to change the property; And although *London* be by prescription a marke open every day, this special custome ought to have been pleaded, otherwise the Court is not bound to take notice of the same. 5. That the traverse of the sale is good, for although it be but a conveyance, because by that the defendant is put out of his law, he may traverse the conveyance without answering the point of the action. As in a debt upon a lease for yeers *non dimisit* is a good plea if it be of land, otherwise of a Lease of sheep, 1 H. 6. so in Debt for arrearages of Accompt before Auditors *non computavit* is a good plea, so in debt against the Sheriffe upon an escape, *quod non permisit ire ad largum*. Also the Defend' in some case of misdemeanour, may plead generally *non culpable*, or traverse the point of the writ as not forged, *non ejecit*, or *non culpab'*. (122.) 6. And at the conclusion although the better form had been to plead to the countrey, yet a good issue might have joined upon that if the Plaintiffe would have replied *quod vendidit*.

315. A man had issue two sons and a daughter, and devised land to his wife for 10 yeers, the remainder to his youngest

youngest son and his heirs, and if any of his two sons die without issue, &c. the remainder to the daughter and her heir, the youngest died in the life of the father, after the father died *per Curiam* it is a good remainder to the daughter being upon a devise although the particular estate fails, and it seems the eldest son shall have the entail by the indent. *Quere* of this case.

316. Sir Thomas yat in consideration of the marriage of his son made a feoffment, and retook an estate to himself for life, the remainder to Sir Tho. his son, and his wife which shall be in tail, and marriage was accompl', the father levied a fine to the King of the said land, and obliged him and his heirs to warranty and died, the son is attaint of treason and executed, his issue living, after the Queen granted the said land to a stranger in tail, and after the feme is restored, *Quere* if the issue shall inherit, after the death of the feme against the Collaterall warranty, fine with proclamation, and attainter of his father, *per* whom he conveys: There was contention in the Patentee, if the feme had right to the intire remainder, or but a moiety, and if she may enter upon the Patentee of the Queen, without lute to the Queen, &c.

317. Issue was joined upon an *absque hoc quod talis dimisit*, and holden by the Court a good evidence that he had nothing in the land at the time: In a Formed' it is no good traverse that the donor had nothing in the land at the time of the gift, but *non dedit, &c.*

(123.)

318. The opinion of the Court was that notwithstanding a traverse be tendred to an Indictment upon the Statute of forcible entry, 8 H.6. That it is at the discretion of the Justices to stay, or grant a restitution, according to that which the title appears to them. *vide* also a *Supersedeas* of restitution granted by other Justices.

319. The Prior of *Plympton* the 1 of *Octob.* 30 H.8. made a Lease for yeers to *Dyer* rendring 10 pound (which is the ancient

ancient rent, at two Feasts of the year, viz. *Purificat. & In-
venē' Crucis, per equales porciones primum terminum solue' in-
cipiend'* at Purificat' Anno 1539. which was the Purificat'
a year and more after the Lease began. The question was
if that Lease be void by stat' 31. H.8. because no rent is
reserved to be paid the first year. *Per Iustic'* the word
Yeerly is not in the Act, for that &c. And by *Whidd' &
Port'* If an ancient rent was well reserved, and after was
released by the Abbot, yet the Lease is not defeasable by
the statute. *Portm'* held in the principall case that the duty
is not discharged, but is only deferred, for the reservation
was yeerly. *Dahf. and Whyddon, contra.*

320. *Poole* Dean of *Excester* being attaint of treason 31
H.8. but not deprived by sentence, but his possessions forfeit
by 26 H.8. another was put in his place, he and the Chap-
ter confirmed the Feoffment of the Bishop, and now the
attaint of *Poole* is repealed by Parliament, and the Bi-
shop died, *Quere*, if the successor shall be bound by that
confirmation.

321. *Davie* held land in Socage, and other in Chivalry
of *F.* as of his Mannor of *S.* and *F.* held over in capite, *F.*
died his heir within age, and in Ward to the King, *D.* also
died & his heir within age, the heir of *F.* sued his livery, and
by office it is found that the heir of *D.* is of full age, *Quere*
if he shall sue Livery or Ousterlemain, and if as wel for the
land in socage as in chivalry. But it seemes the socage
land shall not be in ward by the Prerogative, because
the tenant held not immediately of the King as the statute
speaks *Pit 2b. N.B.* when the wife of *D.* hath her dower as-
signed in the Chancery, she shall not be sworn the Kings
widow. (124.)

322. In debt against the heir, upon issue of nothing by
descent in Fee simple, the Jury gave a speciall verdict, that
the father devised all his chivalry land to his wife, till the
Defendant his heir was of the age of 24 years, and then
that the intire shall be to him and his heirs, and his wife
to

to have the third part during her life, and if he dye before he hath accomplished the age of 24 years, it shall remaine to the Feme for life, & after her decease to the heirs of the Devisor, the heir being 24 years of age the wife died. It was holden that there was no in tail, but the intire was in the heir in Fee by descent, and not only the third part, and that he is lyable to the obligation of his father.

323. A man who was indebted to the Queene in 200 markes upon Recognizance, was attaint of Treason, the Queen pardoned the treason, and gave, granted, and restored all his goods, chattels, &c. which he had forfeit by this attainer, (125) the debt is not gone by this pardon, nor by the suspension, *per* Justices.

(126.)

A second deliverance by *Throgmorton* against *Tracy, com.*
145.

Hil. (127)

324. A man devised land to his wife upon condition to bring up his eldest son, and after the decease of his wife to his second son in tail, the wife entred but educated not, the eldest son entred upon her, It seemes here his entry is congeable. And first that a Condition may be annexed to a Will, by the Statute of Wils, which gives free liberty to a man for to devise for advancement of his wife, &c. *Linter* that a devise that the Executors shall sell land, and they retain it, the heir may enter for breach of the condition, 18 *Elizab.* 345. A devise of land upon condition to pay rent to his wife, and added to it a clause of Distresse, yet both penalties shall stand, and a particular estate may well be upon condition, although the remaind' be without condition, and hee in remainder shall not take advantage of the condition, but the heir because hee is prejudiced in his inheritance by the devise. And the heir by his entry shall defeat onely the estate of the feme, and remainder may well stand by the devise without the particular estate: but if the estate had passed by livery, otherwise it
had

had been, because the livery is defeated by the particular estate being defeated. Also a condition may defeat part, as a Feoffment of two acres upon condition, that if hee doth not such an Act, that the Feoffer may enter in one; and if tenant for use and hee in remainder joyn in a Feoffment upon condition, that if such an act be not made, that tenant for life shall re-enter, that shall not defeat the intire, 11 H. 7. 6. A gift in tail the remainder to the right heir of the Donor, upon condition that if he alien in Fee, it shall be lawfull to enter, upon condition broken the estate tail is onely defeated, *Quare, vide Newes and Schollast' case*, like adjudged limitat' and that he in remainder may enter.

(128.)

325. A woman servant conspired to rob her Mistresse, and in the night she let in the Felon at the Dore, and him had to the bed of her Mistresse, where he killed her Mistresse, the Servant holding the candle, but said nothing: *Quare*, 33 to 3, if shee be principall, and if it be petty Treason.

326. Three Parceners of a Reversion, one aliened her part, the particular Tenant died, the eldest entred into the intire *per curiam*, the Grantee and the other Co-parcener, may not joine in a rent of partition against the third, because one of them is intituled by the common law, and the other by Statute 31 H. 8. *Quare* if the entry of the eldest parcener gives seisin to the Grantee, as he doth to the other, because of the privity. *Ballards case*.

327. *Wilford* was bound in an Obligation without day of payment limited; and devised land to his Executors upon condition, that if they paid not the said summe according to the obligation, that the devise should be void; and that then A. shall have to him and his heirs upon condition to pay it, and A. dyed, the Executors are requested to pay it, *Quare*, if the Heire of A. may enter, and pay, &c.

328. *John Constable* pointed to one, and said to his friends

friends, *Ecce Reg' Edw.* hee had sent to the Queen to render the Realm to him, and the Queen answered she got it by the sword, and yet she acknowledged she had right to it, It was holden that it was not a direct affirmation, that another besides the Queen had right to the Crown, within 1. *Mary: per griender* opinion, yet he had judgment and executed as a Traitor, *Quere* if it be not within the *Declarat. 25 Ed. 3.*

329. A Subject by license departed the Realm, and upon a privy Seal sent to him he did not return, his Chattels and lands were seised to the use of the Queen. *Tempore Ed. 2.* (129.)

330. Teste of a writ of Entry in *le quibus* was 13. Feb. and it was returnable *crastino Purificat'* and so the returne before the Teste, and upon that error the Judgement reversed.

331. A Grandfather tenant in tail made a Feoffm' to the use of himself for life, the remainder to a stranger in tail, the remainder to the right heirs of the Grandfather, the Grandfather died, the Father died, stat. 27. is made, the stranger enters, dyes without issue; his wife with child. The son entered as right heir of the Grandfather, *Quere* if he be remitted for the first in whom the remainder in Fee is vested by the statute; in which estate it behoves of necessity to be judged in, if then the entry of the son be not congeable upon him, *Quere, Bonvils case.*

332. *Quere*, if wast brought by the Bishop shall bee *ad exheredat' Epis. or ad exheredat' Ecclesie*, for the Register varies.

Pas.

333. *Haydon* brought an Attaint upon the statute 23 H. 8. against *I* upon a verdict in *Assise. I.* died hanging the writ, notwithstanding *proper stat'* the writ shall not abate. The false oath was assigned, because it was found that certain land in *S.* was not contained in the letters patents made to *A.* Sec. and the plaintiffe averred that it

was contained, and the verity was that the letters patents misrecited the town, and name of the last tenant of that, but the misrecitall was aided by stat. 35 H.8. in that case as it seems. But because the Justices of Assise would not have the statute given in evidence to the Jury in the country for troubling them, because it was not pleaded, it shall not now be given in evidence, *per que pl. nesme.*

334. A Church being void upon 2 stat' 11 H.8. for taking another of 8 pound value without qualification: now the Paron granted the first and next presentation, which first and next should happen to fall: holden that the present avoidance shall not passe. *Agards case.* (130).

335. Tenant for life, remainder in tail, remainder in Fee, of land holden in Chivalry of the King, hein remainder in taile died his heir within age, the King granted over the Seignory, and tenant for life died. *Quare*, if the Grantee shall have the Guard, for the interest began by the death of the father, which was before the Grant of the Seignory. *Sir Thomas Shares case.* 24. Ed.3.33 *Simile*, where the Grantee had the Ward. *Nota hic*, that although the issue be the first in whom the remainder vesteth, yet he had it by descent.

Trespasse by *Hill* against *Grange*, *com. fol.* 164.
(131.)

336. The possessions of the Abbey of *Combe* came to H. 8. divers parcels being in lease for yeers, the King made a lease for life of all to the Duchess of *Richmond* and died, *Ed.6.* granted the reversion, the Grantee made a Feoffment of all and a letter of Attorney to make livery, the Attorney made livery in one parcell which was in lease in name of all without Attornment, or agreement of the Termers, *Quare*, what passeth: *per fix* Justices if there be not words *et omnes inde expellend'* it is a disseisin for the Attorney to make livery where other had state for life, for the authority shall be intended to make a lawfull act, fix others held contrary.

337. R. Read brought Appeal of the death of his brother against 5 principals and one accessary, 3 principals and the accessary appeared, the Plaintiffe counted against the Principall who appeared, and two others absent, (but upon no Indictment): and against the other of procurement and abetment, two principall and the other pleaded non-culpable, and so at issue, the 3 principall plead non-guilty ready to defend' by his body; upon which Plea the Plaintiffe Demur'. *Ven. fac.* several warded to try the plea of the others, *sed cess' versus ptecess' quæque princip' legit' modo convinc.* In the mean time they were put to Bail, after the Demurrer was adjudged against the Plaintiffe; and the Defendant had Judgement to goe without day: And one of the Principals which appeared not is returned dead, the other outlawed; Also the Plaintiffe at the *Nisi prius* was non-sute against the two. And according to the statute the Jury at their request were command' and found damages *tam occasione appelli quam infam' & impris.* severally; for the Plaintiffe had not sufficient, for which they found the Abettors per name, *viz. quod procuraverunt, instigave' & abbet' &c. sed non dicunt' per malitiam, Nota.* Another was charged at the same time against the accessary, but it was not recorded, that they were elected, tried, sworn, but per curiam discharged, and the Plaintiffe was non-sute and inquire of the Abettors *ut supra*, and at the day in the bank Judgment given according as to the 3. & *quod irent sine die; sed quoad sectam Regis*, they were severally brought to their trials, but one made a default, upon which a *Capias* issued against him and his Mainpernors, the accessary and the other principall pleaded non-culpable, and were acquitted, and the Abettors inquired of as *supra*, severally, *vide Westl. 2. cap. 12.* for the authority of the Justices of *Nisi prius*, to inquire of damages and abettors; *vide also 10 Ed. 4. 14.* that they may not give Judgement of the damages by the *stat. 8. H. 6. cap. 1.* *vide the opinion Fairfax 22 Ed. 4. 18.* And now he that was discharged upon demur *supra* was arraigned

ed at the sute of the King, for it was no acquittall, (*Nota*) and was found not culpable, and had Judgement of acquittall: now he which made default, and appeared at the sute of the King *ut supra*, came in by the Exigent, and because the Inquest first returned was discontinued upon the Roll, a new *Venire facias* issued, he was also by that non-acquitted, and damages found newly to ten pound, and that the Plaintiff was sufficient, and at the request of the accessary, because upon the acquittall of all the principals he is discharged. The Jury again found damages for him to two hundred and twenty pound, and that the Plaintiffe was insufficient, and found 6 abettors *ex malitia*, so three severall times damages had been inquired for the Accessary, but *Scire facias*, agard against the abettors upon the last, because before the acry was not lawfully acquitted before. And exception taken because in the *Scire facias* he had not made mention of the acquittall, of the principals, and some pleaded *quod non abettors*, others justified by common fame, and the Plaintiffe averred of his wrong without such cause, and both found for him, and damages assessed, and had Judgment.

Trin. (132.)

338. The stat. 1 & 2. *Phil. & Mary* cap. 10. that tryals in treason shall be according to the course of the common Law, takes not away the force, 35 *H. 8.* cap. 2. for triall of treason committed over the Sea, because it was not triable at all at the common Law; But it takes away the force of 33 *H. 8.* of triall in a forain county, *per Justices*, but the intent of the said statute was only as it seems to take away the force of the statute 5 *Ed. 6.* cap. 11. for the two accusors.

339. *A. & B.* Surveyors to the Marquessle *Dorset* made leases by Indent' witnessing that they as supervisors demis't &c. rendring rent to the Marquessle, with condition of re-entry to the Marquessle, and clause of warranty of the Marquessle *in cuius res testim' &c.* the Surveyors, *sigil. appos.* *Quare*, if a good Lease in the name of the Surveyors, and if the words *ut supervisores*, do not imply, that they were not surveyors in deed,

(133.)

340. The Plaintiff in the Court of Pypowders counted of a contract made the last Fair; whereas there was no plaint begun and no judgment of amercement of the Defendant was given: and holden an error in both *per tous le Justices*.

Mieh. Quarto Maria.

341. After grant of the next presentation, the parson made a Lease rendring rent which is confirmed by the Patron and Ordinary, after the parson was deprived for marriage, so that the Grantee of the said turn presented, it seems the entry of this Incumbent is congeable upon the lessee.

342. Tenant in tail, the remainder in Fee, Tenant in tail levied a fine with proclamation, he in remainder died his heir within age, and tenant in tail died without issue, so that title incurred to the infant, and 5 years passed and yet he is within age; notwithstanding statute 4 H. 7. saving the action to the infant till full age, and then he shall have 5 years, yet he may use his action within age if he will, *per all the Justices, Petie' Bassett. vide plus. 136.*

343. The yeer of the delivery of the warrant to the Chancellour of the grant of an Office was omitted; viz. the entry was; *Memorand. 1. De. an. H. 8. ista billa deliber' fuit Domi. Canc. Anglia;* But it was filled among the warrants of 37 H. 8. and the Letters Patents bare date, 1 De. 37 H. 8. *vide* statute thereupon 18 H. 6. cap. 1. and *Ludfords* and *Greys* case, Com. adjudged a good Patent where the day of the delivery was not entered.

344. S. & C. as principals and Benjamin Smith and his wife as accessaries were found culpable in the procurement of the death of *Ruford*, at the sute of the Queen, and the principall was executed, and Benjamin the accessary, for his Clergy was *solle per Parliament*. and the Queen pardon the woman; *Quare* if an appeal lieth against him, for the principall is not named, neither in the appeal, nor in life.

345. Gavelkind land was devised to the husband and wife for life; remaind. *proxim. hered. mascul. corporibus suis legiti-*
tim.

zim. procreat. imperpet. the husband and wife had three sonnes and died, if the eldest shall have the intire Demur'. *Vide* remaind' *seniori puero*, and in another deed in English cyne child. *Post. Eliz.* 337. (134.)

346. It was resolved by the Iustices, that notwithstanding 1 & 2 P. & Mary (trials) of treasons shall be according to the common Law, there shall be accusors upon the Indictment upon 5 Ed. 6. cap. 11. Also in misprison for concealment of Treason, there shall bee two as well upon the arraignment as upon the Indictment; And the words of the stat' 5 Ed. 6. except he voluntarily and without torture confesse it, that shall be intended before the arraignment. And the accusation under the hands of the accusors, or testified by others is sufficient, and if the accusation be upon Record, it sufficeth although the accusors be dead.

347. In trespassse the Defenda said the place, &c. is and was the Frankten. of A. at the time; and as servant, &c. The Plaintiffe said that a long time before the trespassse B. was seised in Fee, and infeofed him; and we were thereby seised till by A. disseised, upon whom we re-entred, and were seised till defend. die & Ann. p. edict. made the trespassse, the Defendant maintained the Barre, and traversed the Disseisin, Holden by the Court a leofail, because in the replication he had not denied the Franktenement at the time of trespassse.

348. *Traps* disseisor made a Lease for yeers, rendring rent, the disseisee re-entred, the Lessee continued possession, and payed his rent to the Disseisor; notwithstanding he is by continuance of possession a Disseisor, for he may not limit his wrong, *per curiam*. (135.)

349. In a *Quare impedit* by Poyner, issue found for the Plaintiffe, but by his negligence the Iury were not charged to inquire of the 3 points. *viz. de plenitud. ex cui. present. & si temp. semest. transsit*. Also the Iustices of *Nisi prius* gave not Iudgement as they might by stat. *West. 2. cap. 30.* Now in the Bank the Plaintiffe prayed a writ to the Bishop, to inquire

of the 3 points. *Lib. Intrac. fol. 110.* the writ is such, *Et quod interim cesset execut' de breve Epis. habendo.* And at the last the Plaintiffe relinquished his damages and had Judgment; *Et breve Epis. suo periculo, Nota.*

350. The Grantee of the next auoydance died, his Executors granted that to a stranger, the Grantee brought a *Quare impedit*, he need not to shew the testament, for the Grant is good notwithstanding they never prove the testament, and it is administration.

351. *Star. 5. & 6. E. 6.* will that the Quarter Sessions in the County of *Anglesey* in *Wales* shall be kept at *Beaumaris* onely, & *non alibi*, they held them at another place; holden that the Indictments were void *per Justices*, because a negative prohibition: And the Justices were fined in the Star-chamber every one at 5 pound for the contempt, because that the Statute exemplified (for it was not printed) was shewn to them before they sat, yet they would not surcease.

(136.)

352. *Quid juris clamat* against *Elizabeth Turton*, she sued a *Dedimus potestatem* with supposall that she ought not to attorn because Tenant in taile and with suggesti' *quod adeo impotens & senio, &c.* that she could not travell to the Bank to plead that, for that the writ (which was directed to *Saunders Justice*) was to resort to the Defendant, and to receive attorney for to appear for her, which was allowed by the opinion of the Court, yet rare in that case: although there are presidents that it lies to receive attornment, so of a recluse, & for a woman with child.

Hill.

353. *Arthur Bassett* son and heir of *Sir John Bassett* within age, *per* petition of right for land, whereof a recovery was suffered before 27. the which is averred to be to the use of the Lord *Darbeny* in tail, the remainder to *Sir John Bassett* in fee; also it was averred, that the tail to the Lord *Darbeny*, was determined by the death of the Earl of *Bridgewater*, son of the Lord *Darbeny* he dying without issue, and conveyed to himself.

himself the same remainder as heir to Sir *John Bassett*. Note that the Indentures which declared the use, were made four years after the recovery, & holden good; also it appeared by the Indentures that the Lord D. had authority in default of issue, in his life, or by his Will to nominate the use in tail to two of his next blood, the remainder in fee to Sir *John Bassett*. But no mention was made in the Petit' of any such Indent', nor averment, that there were any such nomination. And it was holden by all the Just' that it needs not, because nothing was given by the authority if no execution was; but if the Indent' had been disclosed then they ought to averre, because the Petition, which is in nature of a formedon in remainder, was for default of issue of the L.D. only. (137.) and it was demur' if the plea ought to abide during the time of the nonage of the Plaintiffe upon plea pleaded in Bar of the Petition, which is not any matter of any of the ancestors of the Plainriffe (which was prayed for the Queen). First it was agreed that if he recover the remainder hee shall have it by descent, for by stat 27. it was a remainder executed in his ancestor, and shall make him to become in ward when he comes to the possession, although it never was in the possession of his ancestor. *Tamen per 2 Justic' q. est tanq' perqte' al heire nesteant unqs. en launc. & lacc. ne descend.* Also especially the Petition of right shall not targe, as 21 Ed. 3. & 43 Aflife is; for it may not be revived, for a summon lies not in the origiual, therefore a resummons lies not to revive it, and it is a mischief to the heir, for a Collaterall warranty may descend to the heir in the mean time, where there is a principle, that in all things the age of an infant shall bee favoured and have aid, but in no case take disadvantage by his age But 5 Justices held *contra*, and that the Petition *targera*. At the Common law in all actions founded upon a right descended to an heir within age, and one whose seisin and e-spees ought to be shewed in the ancestor, the Tenant by exception to the person of the Demandant, shall *targera* the plea till, &c. without plea pleaded *contra*, if the King being within

within age brings a Droit 6 Ed. 3.) but as it appears by the Stat' Glouceſt' cap. 2. it was otherwiſe of an action anceſtrall poſſeſſory, founded upon one dying ſeiſed where he need not to ſhew the eſplees; as *beſaiel. aiel, & coſnage*; except he had pleaded a feoffement, to which the heir for tenderneſſe may not answer; and becauſe the circumſtances ſhall not be inquired as in Mordanceſt. and Aſſiſe, but that caſe is alſo remedied by the ſtatute, and notwithstanding ſuch feoffement pleaded, the inqueſt ſhall be taken as of another man of full age. And weſt. 2. cap. 46. is to be intended where the heir of the Diſſeiſee makes freſh ſure, per 24 Ed. 3. Alſo notwithstanding that the heir of the feoffee of the Diſſeiſor, the Vouchee, the prayee in aid, & tenant by receit within age ſhall have their age. The like caſe brought by a huſband infant, and his wife in reversion, upon alienation of tenant for life, becauſe it is in the right of the wife the plea ſhall not abide. But in a Formedon in reverter the plea ſhall abide. So in an appeal of Murther, becauſe he may not deraign barrail, and although he may have a champion in a Writ of right, yet the plea ſhall abide; becauſe he may not diſcern his right anceſtrall. *contra*, if he brings a Droit of his own purchaſe, becauſe it is intended he may as well defend as purchaſe, per 40 Ed. 3. as it is alſo in Aſſiſe, and Entry in nature of Aſſiſe. And if an infant be Seignior, and the Tenant ceaſe, or diſclaim in Avowry made of his own ſeiſin. Alſo in Eſcheat the plea ſhall not abide becauſe no right deſcends in the land, and reaſon will that he ſhall have the land in recompence, where the ſurviſees; and in ſome caſe though the anceſtor might have had the action, yet the plea ſhall abide, as if one had cauſe to have a *Dum ſuit infra etatem*, upon an eſtate made by his anceſtor who died within age, for at the time of his death the anceſtor might not have the ſaid writ, becauſe within age. And now by the nonage of one of the Demands the plea ſhall abide: The ſame law in a *Dum non ſuit compoſ mentis*. So in a Formedon in Diſcender, the anceſtor might not have the action; where he himſelf was the man
from

from whom the descent was; (138.) And the heir in socage shall not have an action of Accompt against his Guardian till full age: also a Formedon in Descender is a writ of right, and the Count *quod remansit ius*, and so out of the stat. of *Glocest. and west.* 1. for after theseisin once had, Formedon in remainder is gone, for that, &c.

354. The Countesse of *Surrey* Tenant for life surrendered to the King with an intention that the King should give to her other lands in recompence; The King aliened those, and gave others in recompence, which being upon defeisable title they are after evicted, she entred upon the Patentee, and it was decreed that her entry was not congeable; for it is no condition but only a confidence. (139.) Also there was not any request made before the gift made by the King, which ought to be when the condition is to be performed to the party himself, *contra* if to a stranger. Also the King in this case is intituled by double matter of record, in which the may not enter upon the Patentee without petition, no more then upon the possession of the King. Also here was a recompence & fine executed, and if a man be barred in a Formedon upon warranty and Assers pleaded it is perpetually a Bar, although the Assers are after evicted. *Quare.* Also it was her folly to accept of it, *Eraston, Scito quod (ut) modus est (si) conditio (quia) causa.*

355. The Earl of *Huntington* covenanted with the Lord *Clinton* to infeoffe him of the Mannor of *D.* before *Easter*, discharged of all former incumbrances but Leases whereof the ancient rent is reserved, after, and before the feoffement he made a new Lease rendring the ancient rent, 4 *contra* 2 that it is no breach.

356 *Cranmer* Archbishop of *Canterbury* made a Lease for years of parcell of the Mannor of *P.* after he granted a Rent-charge out of the same Mannor to *Dr. Buts*, who also after devised the rent to the same Archbish. till 100 pound be levied *per retaining*, the remainder to *D.* and died, the 100 pound is levied and the rent is behind, and *D.* distrained upon
on

on *M. Lessee of H.* for one yeer, who pleaded in Bar to the Avowry the Lease made to *H.* before the charge, who let to him, and shewed not the originall Lease, nor shewed not the place where the confirmation of the said Lease was made, upon which the Avowant demur', and exceptions were also taken to the Avowry. (140.) Because he pleaded the confirmation to the grant of the rent *quod Prior ecclesie Cant' & ejusd' loci Capitul' confi m'*, and said not *Cathed'* nor named the Saint, whereas there were divers Priors and Churches in *Canterbury*; and said also, as in the same writing bearing date at *Cant.* in the Chief house, or in *domo capitul'* fully appeareth, where it may be delivered in another place. And for the imperfection in the pleading both parties Repled' agard. But as to the matter in law it was moved; If a Rent-charge for yeers shall passe by a devise paroll, because locall, but agreed it shall goe to the Executors, as it is of a Relief due to a Lord, because they represent the Testator. And a devise of a Ward and a Villain is good *per paroll* because transitory, and if a new Rent-charge being against common right be deviteable as land is, because it shall charge the Tenant without attornment, and not *per prescription*. Also if the remainder be good, depending upon a particular estate in suspence, for if a Seigniorie be granted to the Tenant for his life, the remainder over, it is a void remaind', and if it be granted to the Tenant and a stranger it shall not stand for benefit of survivor, but is extinct as to a moiety; also it was said that by the regrant to the Archbishop the annuity was suspended, and a personall thing or action once suspended by the act of the party it is gone for ever. But otherwise if by the act of the law; Then also he may not after have resort as to a Rent-charge, for although it be at his election to charge in whose hands soever, yet if he discharge any of the hands both is gone. Also after the archbishop aliened the Mannor whereof, &c. to the King, and by that the rent granted is included; and as to the Devisee of a term for life, and if he die before expiration that shall remain, &c.

if

if the first alien the entire, he that should have the remainder is without remedy. *Quere* if a *Quem redditum reddat* lieth where termor of a Rent-charge grants that by fine.

357. Sir John Gates having fee, made a feoffment of certain land, and after committed treason and is attaint and executed, although the land is not forfeit nor elcheated, yet adjudged his wife shall not have dower. *A. Browne contra vehement* according to the opinion of *Wavif.* in *Littl. stat. 5. & 6 Ed. 6.* which bars the wife of Dower in case the husband commits any manner of treason, extends to pety treason *per Stanf. fol. 193. per generalty.*

(141)

358. A man made a Lease by Indenture for 90 yeers to *Gough*, and after made a feoffment, and after took an estate in tail to him and his wife, &c. after *Gough* took a new Lease of the husband *per paroll* for 18 yeers, the husband died. The opinion of the Justices was that the wife may enter, for the acceptance of a new Lease is a surrender of the old.

359. *Ed. 6.* granted to Lady *Mary* the Mannor of *D.* so long as she should continue sole, she granted a Rent-charge, *Ed. 6.* died, and she is made Queen, and the reversion descend to her, and now she married, *Quere* if she shall avoid the rent *Paf.*

360. In a verdict upon a writ of Forcible entry brought against 7. upon the stat. 8 *H. 6.* that four disseised, and put out by force, but only one detained, the 4 joined in an attaint upon the expulsion and disseisin, and adjudged well, and that for the Detainer the other is to have an attaint if he will sole.

361. A man avowed for damage feasant, they are at issue, and after the Plaintiffe is nonsure, doubted if the avowant shall have costs and damages, because the stat. 7 *H. 6. cap. 4.* speaks only where the Plaintiff is barred; and also where the a vowry is for rent, customs, or services, but by 21 *H. 8.* it is cleer that he shall, for this extends to a nonsure, as well as where

where the Plaintiff is barred, and as well where the avowry is for damage feasant as where it is for rent, customes or services.

362. Sir Will. Cuts disseisor commanded his termor to keep possession against the Disseisee as his termor, and after went over the sea, the Disseisee entred, and is ousted by the Termor, who after payed the rent to the use of C. after Cuts died, if that be a descent, viz. if the Lessor be a Disseisor til agreement after the disseisin, in divers opinions, The Inquest to try the traverse coming to give verdict, the Traverser is non-sute, *Quere* if receivable, and *Quere* if peremptory.

363. *Tenus* in the Star-chamber, that he which had quiet possession 3 yeers upon good title, if after he be put out by force, & restored again, yet he may not justifie to detain with force, by the proviso of the said Statute, because his possession was interrupted, neither may he come with multitude with him to put himself in posses. *Per Sanders* chiefe Justice, if a Termor be expelled by force, (142.) hee in reversion may not have an action upon 8.H.6. for although he be disseised, yet he is not expelled. *Vide* the Stat. for the disjunctive.

364. The husband conveyed two parts of his lands held in Knights service to his wife for advancement, which he intended to marry, and after married the wife, and after infeoffed a stranger of the moiety of the third part and died his heir within age, if the supply to satisfie a full third part may be taken out of the said two parts *per* the Seignior, *Quere, pro domino Paget.*

365. A man made a Lease rendring rent at the feasts of St. Mich. and of our Lady, or within a month after, and if it be behind after the said feast, and a day limited by the space of eight weeks, it shall be lawfull to enter, *Quere* if the 8 weeks are accomptable from the feast day, or from the month; *per* divers from the month, which is the 28 day after the feast, because the most reasonable intendment for the Lessee, and the 28 day is as well a day of payment as the feast day at his pleasure. And *Quere*, because the month is

a time intire, whereas the words are Feasts, and Days, *Nota* also the copulative.

366. *Trevilian* and *A.* his wife joint-tenants in fee suffered a recovery 23 H.8. averred to be to the use of the husband only, (*Quere*) after in 24 H.8. he devised the said land to *A.* his wife for life the remaind', &c. and died not till 37 H. 8. Holden a void devise, for the devise was not within the sta. 1 *Rich.3.* to convey the possession, till the statute 27 H. 8. which transfer the use in possession, (143.) was a countermand of the devise *per* drowning the use in the possession, & the possession may not be devised till 32 H.8. which inables to devise the possession, and that shalbe intended to inable in time to come. So for the weaknesse of the foundation, &c. and that from the beginning, &c. and it was adjudged void. yet it had been good by a new publication after 32. The *will* before and after *juxta*, is alwaies intended a Town of it selfe, and not a Hamblet. *Quere* after an estate in fee pleaded, to inable to devise *per stat. 34. & 35.* of explanation, it behoveth to conclude *& de tali statu suo obiit seifit'*, and not *& sic seifit' obiit*, for that shal not relate to the estate mentioned, for it may then bee intended he died seifed of an estate in tail, whereas he which is sole seifed of an estate in fee may devise by the statute of explanation.

(144.)

367. A man being over sea is disseifed, and after recomes and departs again, and a descent is had, *Quere* if he shal be bound, except it be proved he had notice of the Disseifin, but if an infant be disseifed, and after he be of full age goes over the sea, he shal be bound, but otherwise if he goes over sea within age, *per opini. 2 H. 7.*

Patent of an office of a Justice of the Bank, the *habend'* is *quamdiu nobis placuer.*

368. *John Sherliys* a Frenchman one of the rebells with *Stafford*, who rebelliously took the Castle of *Scarborough* in *Yorkshire*, was now arraigned in the Kings bench upon an Indictment of treason, which was *contra legem suæ debet*,
Nota

Nota, it was well, although he was no subject, because in a time of peace. But if it had been in a time of war between our two countreys, he shall be ransomed, and not arraigned, and the *Venire facias* awarded in *Tork* was generall, and not *de medietate lingue*, for there are no presidents of triall in treason *per Med ling'*. Also the stat. 1 & 2 Ph and Mary is, that all trials in treason shall be according to the Common law. But for felony and murther it is otherwise, as in the case of *Gavarre* of the death of *Gambo*, 3 Edw. 6. The triall *per Med ling'*. first by the stat. 27 Ed. 3. cap. 8. was made for aliens which were Merchants of the Staple, who moved plea before the Minor of the Staple. But by stat. 28 E. 3. c. 13. it is made general for all aliens, and in all pleas before whomsoever, yea although the King be a party. But after there was a statute 2 H. 5. cap. 3. which is, that in a plea real or personall where debt or damages amount to 40 marks, that it should bee a good challenge that the Jury had not freehold 40 s. per yeer; and because an alien may not have freehold here this statute was declared *per H. 6. cap. 29.* not to extend to such tryalls; *Quere* of the said statute, for the King and the Lords only made the said declaration, and the Commons are omitted in the words of the act. The Plaintiffe 21 H. 7. after *Venire facias*, and *al. distringas* shewed that the Defendant is an alien, and to avoid delays for that, and prayed a *Venire facias* of new *de med' ling'* according to the statute, and he had it. (145.) *Quere* if an alien Plaintiffe suffer a *Venire facias* to be returned before he requires *med' ling'* if hee hath not passed his time, for the statutes were made for their benefits if they would require them.

369. Information upon arrearages of accompt adjudged before Auditors assigned by Commission, was put by the Atturney of the King against the Receiver of *Irel'*, the Defendant may not wage his law, but ought to plead *ad patriam, nihil debet.* Vide Stat. 5 H. 4. cap. 8.

370. Land was given to the father and son in tail, the remainder over, the father died, and his son heir to the in tail, after

after the son discontinued and died, 3 Justices that there needs not severall Formedons for he in remainder, *Quere.*

371. A Dean made a Deputy *per* paroll who in his absence with the Chapter confirmed a grant made by the Bishop, *Quere*, if it shall bind the successor.

372. The stat. 8 H. 6. cap. 16. that a demise or a grant to ferm by the Lord Chancell' &c. before office fully returned (or within a month after, if any tender traverse, and offer to take it to ferm) shall be void; after till 18 H. 6. cap. 6. there was a evasion used, *viz.* to take to ferm before any title found for the K. (146) which is remedied by the said stat. 18. Those statutes are not to be intended but that such grants are good, where the King is wel intitled without office. Also an estate in fee or tail is not within the statute.

373. *Villers Assise*, It was found upon speciall verdict, that the husband and wife seised in the right of his wife *per* Indenture, in consideration of 60 pound demised, bargained, and sold land to B. for 30 yeers, the remainder to themselves for life, the remainder to their son, and to the daughter of B. in tail, and suffered a recovery to the said uses, and it was found besides out of the Indenture, that the said assurance was as well in consideration of the marriage to be between their son and the daughter of B. as for the said money: and over it was found that the father and mother died, the term expired, the son having issue died, his wife levyed a fine as that, &c. to a stranger with warranty of the said land, the issue within 5 yeers entred for the forfeit, (147) upon 11 H. 7. against whom an Assise is brought, *Dyer*. The money is the sole consideration expressed, then the other shall not be averred, as an use shall not be averred against an use expressed. *Neque causa matrimonii prelocuti* or other consideration is expressed, but if no consideration had been expressed, then a consideration might have been averred without deed; also the land went from a feme covert who may not limit an use but by writing, then the consideration with her assent shall be only in writing. Therefore before 32 a Lease paroll made
by

by husband and wife, and the husband died, and she accepts the rent; yet the Lease is not affirmed because it could not be assented to at the first, and then the finding of that by the Jury, which may not be averred, nor given in evidence, is void; Then it is not within the 11 H. 7. for it is not a Jointure although made by the ancestor of the husband, for a Jointure shall have no other consideration then love and advancement, where nothing was the cause here, but the money of the King, or the Kings coin. Also a Jointure shall be a present sustentation, and not a remainder as here. But three held *contra*, and that another consideration which is not repugnant to that mentioned in the Indenture may be averred, and it shall be within 11 H. 7. although money be part of the consid', for wel-nigh all marriages are made for money. *Dyer*, that a gift in frank-marriage may be before, or at the time, or after marriage, and upon divorce the feme shall have the intire; and it is said frank, because the dispositi' free from services: (148.) notwithstanding the Stat. of *Glocest'*, yet warranty by tenant of the courtesy, continues collaterall, notwithstanding it be no Bar without assents, and it seems if he enters not in the life of the father he shall be bar' without assents, so by a release with warranty, for that is not an alienation, as the words of the statute are; and the statute is where the husband aliens the inherit' or marriage of his wife, so that it seems that land purchased by the wife is not within. But the stat. 11 H. 7. is more hard against women, because they have no voice in Parliament, and eradicate and made void all; and where a woman had jointure in tail, there warranty lineal, & no bar without assents, which is reasonable, and yet by the said statute that is destroyed, which is hard, and therefore the statute shall be taken strictly; there it is said a man may not revoke a gift *Causa matrimonii prolatusi* as a woman may.

Trin.

324. If a woman covert be tenant for life, and a fine levied of that to her and her husband, who renders for yeers, *Quere* it a forfeiture; It's cleer if a feme bee before in taile within

within 11 H.7. and accepts such a fine, it is not a forfeit. *Pennycocks case.*

(149.)

375. Debt against the heir upon the obligation of his father, who aliened the assets hanging the writ, and pleaded nothing by descent the day of the writ purchased, &c. it was found against him, and a generall judgment, and an *Elegit de mediet' omnium terrarum* the heir as his proper debt. But this *Elegit* according to the ancient Formedons without limitation of time, and upon return *nihil habuit*, &c. another *Elegit* issued to extend that, *quod habuit die of the Nisi prius*, for this day, and the day in the Bank are all one in law. *Brooke* if he had aliened of covin hanging the writ, if that be returned by the Sheriffe, a new writ shall issue reciting that. Note the execution was ruled by the court *ut supra*, yet elsewhere speciall judgment, &c. and execution of the intire assets, *quod durum*.

Assise Hunt of the office of Register of the Admirall Court *post fol. 153.*

376. Before 27 H. 8. an use was limited to *Alice* at S. and J.N. in speciall tail, they enter-mary, the stat. 27 H. 8. made, makes them not joint-tenants by individed moities, for that executes the possession in such form, quality, and condition, &c. Therefore where the husband after aliens the intire to one of the feoffees and die, the wife shall have a *Cui in vita* of the moity, *per Curiam*: but if she dies the son may maintain a Formedon of the intire. Note the use changed *supra* upon the posses' of the feoffee without claime, &c. *Bedles case.*

(150.)

377. A man made a Lease by Inden' in which are words *provisum est quod si* Lessee die within 60 yeers, that the Executors shall have it in his right, till 60 yeers from the date, *per Curiam* it is but a covenant and not a Lease, *Graveners case.*

378. A man bound in 20 pound for the payment of 10 pound hee pleaded tender at the day and place in a debt

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brought

brought upon the said Obligation, and upon demur' adjudged, that he behoves to plead alwaies ready, although there be a place certain where the payment shall be, otherwise it is of a thing collaterall, *Panells case, Catling, & Griffith contra*, because the place is parcell of the obligation, 7 H. 4. tamen 11 H. 6. *contra. vide* good diversity, 19 H. 8. 12.

379. *Eaton* Colledge incorporate by name of *Præpositi & Collegii Regalis Coll' beate Mariæ de Eaton juxta windsor*, they made a Lease by name *Præpositi & sociorum Colleg' Regalis de Eaton, &c.* leaving out *Beate Mariæ*, and adjudged void.

380. *Umpton* after 31 devised the intire land held by Knights service, and in the 34 of explanation of such a devise to be good for two parts, *Umpton* is specially except, yet adjudged good for two parts.

Mich. Quinto Mariæ.

380. *Brooke* Chief Justice of the common place revoked a grant made by himself before of the office of the chief Protonotary, beca. the Grantee *inidoneus*, & gave it to another, and there is a *president* put 5 E. 4. (151.) where the office of the clerk of the Crown in the Kings Bench was granted to a Vintner, and another, and after died, and the Vint' exhibited his Patent, & it seemed to the Justices because he was never exercised in the office that his Patent is void, and refused to admit him, for the benefit of the King and his people, and after signified his disability to the King, and commended another to him as sufficient, which the King *Ore tenuis* them commanded to admit and swear.

381. *Sir John Savage* Sheriffe in fee, was indicted in the Kings bench for escape of two felons *selonice & voluntarie*, and of hold' his Turn *in loco consueto* against the statute of *magna Charta*, The Attornys of the Queen put in an Information upon the Indictments, and by the Court his office was seised without a *Scire facias quousque, &c.*

(132.)

382. *Per tous les Justices* where a man deviseth that his Executors shall sell land, and of the sum coming, shall give
such

Such a portion to his daughters; it is not a Legacy, because out of land, and an action of Accompt lies, and not sure in the Court Christian, upon which a prohibition was granted, *contra 9 Eliz.*

383. A man being in execution in the Fleet for a debt recovered in the Common pleas, being before condemned in the Kings Bench for another debt, he was now removed by a *Corpus cum causa condemnatus*. It was holden that the Plaintiff may acknowledge satisfaction for both debts in the Kings bench, for he is in the Ward of the Marshall for both, and if he escape the Marshall shall be chargeable for both.

384. A *Proviso semper*, and it is covenanted and agreed, and the Lessee covenants and grants, that neither he nor his Executors or Assignes shall not alien or grant the term to any without the assent of the Lessor, otherwise then to his wife, or to one of the children of the Lessee, the Lessee died, and his Executors granted the Term to one of the sons of the Lessee: And 3 held that he may not that grant over to a stranger without licence, but two held contrary, and that the restraint is determined by the grant to the son, *Quere* also if it be a Condition or but a covenant.

385. *Thymolby* & another arraigned upon an indictment of robbery, pleaded *non culpable* and a *Venire fac'* awarded, and 3 of the Jury were sworn against both; T. challenged 4 others without shewing cause or laying peremptory, and the other would not challenge them, upon which T. was taken from the Bar, and more till 12 sworn against the other, and found him culpable, and by all the Justices it is a good trial, for he was not discharged but stood aside for a time; ruled 1 H. 5. for although it be one panell indeed, yet it is severall inquests in law, and may proceed against one sole, *contra* in an appeal, & this *Venire facias* had not words; *& qui nulla affinit' atting'*; &c. as in an appeal. (153.)

386. In assise *Hum'* of the office of the Regist' of the Admiralty it was prescribed, *quod quilibet hujusmodi persona*, which shall be named by the Admirall, shall be Register of the

Admiralty for life, and it was found that the Admirall named two by deed *habend'* for life, and that one is dead; *quare* if the prescription be performed, *viz. si quilibet* shall be taken singularly, that but one shall be officer; where is a name collective, and understood of many. Or if where one dies so that the other ought to claim in by the first Grantor, as by a Grant made to him sole, if that maintain the prescription. It seemed to divers that it shall. *Quere* also if two may be Joint-officers, the Grantor by deed of an office shall not alter the prescription to nominate *per paroll*, for a man may speak or nominate by his deed. A Corody uncertain may not be granted but to one, but certain may be granted to many. *Fitzh. N. B. (154.)* There it is holden if a man assign dower to his wife by deed, *habend'* for term of his life rendring rent, it is void *habend' & reddend'* for she is in by her husband.

387. In a writ of entry in the *Per*, an essoin of the service of the K. in *partibus transm.* was put by *Knivet* for the tenant in *octab. Tr.* and he had day til *craslin' Martin'*, *Quere* if the day to bring in the essoin shall be given to the essoiner, or to the termor; also if the grant of the absence shalbe *die Lu. in cra' oct. Trin.* and *octab.* because *die Dominico*; The warrant to the Justices is by writ close and recites the essoin, but not that the essoiner is sworn, yet it behoves to swear him of the verity of that.

388. Tenant in Chivalry of a common person made a gift in tail, the remainder to the Queen in fee, Tenant in tail died, his issue within age, *per opin.* he shall not be in ward to any, for the Tenure of the ancient Seigniorie is extinct, and the services gone by the fee simple in the King, who may not hold of any. (155.)

389. *Oldnold* indicted for slanderous works of the Queen three months passed, *contra* the form of divers statutes generally, and without mention *unde scandalum in Regno inter Dominam Regin' & Magnat' vel populum suum oriri poterit*, he was after arraigned and convicted of that; the question was, what

what Judgment he shall have, and by what law, for he is not punishable, per 1 & 2 P. & M. because the three moneths passed, and the 2 & 12 Rich. 2. are only of punishing slanders of the Nobles. So it is only punishable by *west. 1. cap. 4.* and according to that he had judgment of fine and imprisonment at the Queens pleasure till he had found out the author.

390. Tyrrell for 400*l.* payed by G. by deed indented and inrolled, bargained and sold, gave, granted and covenanted land to the said G. and his heir *habend'* to the use of the Bargainer for life, the remainder in tail to G. the remainder to the right heirs of the Bargainer, this limitation by the *habend'* is void and impertinent, for by the Justices it is of an use rising out of an use.

391. Land deviseable came to H. 8. by dissolution, who granted it to hold in Chivalry *in Capite*, the Patentee devised the intire, it is a good devise against the heir for all, for no words in the 32 H. 8. restrains the authority to devise land deviseable before the statute, but peradventure not against the King for ward and primer seisin.

392. At the Common law a *Melius inquirend.* is grantable per Register, where found was by office *quod tenementa tenentur* of the heir of J. S. and named him not; (156.) where A. is heir of the part of the mother of he which is dead, but of the part of the father *ignora'*. And also where the value was too little. But doubted upon the clause in the 2 Ed. 6. c. 8. that where *de quo vel de quibus ignorant*, where tenure of the King is found, but by *qu. servic' ignorant*, that a *Melius inquirend'* shall be awarded as is used, any late custome to the contrary notwithstanding. If non obstant, the *proviso* in the Act which extends not to prejudice or take away the title of the King, or of any another accrued by any other inquisition before the said day, but they shall enjoy as if that Act had not been made, if upon such ancient offices meant *Melius inquirend'* lies; the better opinion that it doth not, notwithstanding Saunders vouched a president to the contrary. If a man be

found by office of the age of 17 years, and when he comes to 20 he is found by *Ætate probanda* of full age, if the Queen had no remedy but ought to make livery. *vide* the words of the Statute, that at his very full age indeed, he shall have an *Ætate proban'* and if it be granted before it seems a traverse shall be admitted, and so ruled.

393. *Greiswold* seised in fee by Inden' made a Lease for life, remainder to the heir males of his own body, the remaind' to his heirs, he died having two sons, tenant for life died, the eldest son entred and died having a daughter: Adjudged that she shall have the land as heir general, for it's cleer the tail is not good, for he may not make his own right heir a Purchaser, without departing with the fee (4 H. 6. *Chapmans* case) but admitting it good, in various opinions if it ends upon the death of the eldest son without heir male, *viz.* if he was purchaser, or had it as heir male of the body of his father by descent. *Vide Robridges* case, 1. 2. & 4. Ed. 3. and *Littleton* in tail and conditions, where land is given to the son and to the heir males of the body of his father which is dead.

(157.)

394. Annuity was brought against the successor of the Bishop of Ely, who granted for life to the Plaintiffe the Stewardship and fee of 40. s. *pro, &c. percipiend' de manerio de D.* and the Plaintiffe shewed that he kept the Court, but averred not the ingrossing of the rolls, and that after the Bishop discharged him, &c. It seems he ought to render his service to every successor, and it is issuable that such successor *non exoneravit*. The Bishop came by Atturney and made no defence, but his Bailiffe demanded consufance, and was allowed; and yet the words *de licet ipsimet sit pars*, are not in the Patent, because so it had been allowed before.

Hill.

395. *Puttenham* by Indenture granted land in fee ferme with condition of reentry for non payment, and covenanted to make further assurances, and by another Indenture bearing like date, he covenanted to levy a fine to the use, intents, effects

fects and conditions in the first Indenture, and to no other, now he levied a fine as that to the Grantee; It was decreed against the opinion, *Baker, Catlyn, & Kelway*, that neither the fine nor condition is gone, for the Indenture rules that, as if it had been an expresse *proviso* to save the rent. (158.) 6 R. 2. *Simile in Assise*, and 23 *Eliz.* *Bradborne* levied a fine of land rendring rent, and now for further assurance a writ of Entry in the post was brought against *J. S.* who vouched *Bradborne*, who entered into the warrant generally, the opinion of all the Justices that the rent is not gone.

306. In a writ of Entry *en le quibus* against *Marrow* of 70 acres of land in *H.* the tenant pleaded that one *C.* was seised in fee, and demised the land to him for life, the Demandant intituled himself by *absque hoc quod dimisit modo & forma*. It was found that *C.* and 6 others were seised to the use of *G.* of the said 70 acres, and of a house in *H.* which house and lands had been from time called *w.* and that the said *C.* and the others 16 *H. 8.* joined in a Lease of the said house called *w.* with the pertinenc' to the Tenant, &c. It was moved in arrest of Judgement, 1. That this demise found, will not maintain the issue for the Tenant. 2. It is not expressely found that the 70 acres are appertaining to the house called *w.* which is found to be demised. 3. A Juror which had his appearance of record, and was not discharged by challenge, he being sworn upon another inquest; 3. *de circumstant.* were put in to make 12. whereof one was in his place. 4. *Quare* if issue for the 7 part of the land be sufficient found for the Tenant.

397. In action upon the case against an Hostler, issue was joined if the goods of the Plaintiffe were robbed in default of the Defendant. *Per Curiam* it is a good evidence that the house was ful, upon which he refused the Plaintiffe, who said he would make shift, &c. and if the cause be false, an action upon the case lies against the Hostler upon refusal.

398. A man made a Jointure of soccage land to his wife, after he purchased *Capite* land, and devised two parts of it,

none of the foccage shall supply the 3. part to satisfie the statute of Wills, except covin may be averred.

Plf.

399. *Dyer* Justice of the common Bank had a Patent and was sworn Justice of the Kings Bench, because *Morg.* which ought to keep the essoynes were absent, *per melior.* (159) opinion *per* this superior auth' the inferior is resumed, as a parson created Bish. Also the entry shall be impertinent, because Judgment then before him in the common Bank shall be reversed before himself in the Bank of the King. But one hath been Justice of the common Pleas and Baron of the Exchequer together. (160.)

400. The husband & wife by Indenture, let the land of the wife for yeers rending rent, her husband died, and she before any day of payment took another, who accepted the rent and died, the lease is affirmed, 3. *contra.*

401. Action upon the case against one, where two sued in the Admirall Court of a thing done in the body of the County and well, for there vexation is severall, and there are presidents of suit one or both as it pleaseth them where two were sued there; And the writ was *tan. pro Domina Reg. quam party.* And the effect of the surmise in the libell shall be put in the writ, so the Judgment was of costs and damage double for the Plaintiffe, and but ten pound to the Queen, & *Capiatur.* And holden that the action may either be brought where the Contract was, or where the citation was served, The writ and the Count were *Coram C.* Lievetenant of the Court of Admiralty, whereas the Court had no Deputy. It is not the form to put the Damages in the writ. In presidents three statutes, viz. 13 *Rich.* 2. 15 *Rich.* 2. & 2 *H.* 4. are put, where here the 15 *Rich.* 2. was omitted.

402. It was found by Inquisition that a Customer purchased land with the Queens money, and by covin had caused the Estate to be made to a friend, that seised into the hands of the Queen til &c. so of a Collector of rithes or fiteens although he dies without heir or Executor, proces made against the

the Feoffees to answer and satisfie the Queen.

403. A man made two Executors, one refused, the other proved the will, and made Executors and dyed, his Executors brought an action of debt, for a debt due to the first testator; and well by *Brook*, for the election of him who refused and determined, & now the first testator is dead intestate, 21 Ed. 4. 28. *Curia*, that the action is not maintainable by the Executor of an Executor, *ideo quare*.

404. A Lease to 3 by the premises *habend.* to the first for life, remainder to the second, the remainder to the third, the opinion of the Court that they shall take successively and not jointly.

405. A man bound with two sureties for 40 pound to be payed at two dayes, for their assurance he sold to them beasts for 40 l. paid, provided if he them discharge and save harmless &c. the sale shall be void, and it is agreed that he shall occupy (161) He failed the first payment, after he is *felo dese*, And awarded in the Star-chamber that the Almner shall have the beasts and discharge the sureties, *Dyer contra*, to all, because the property is in the vendees upon breach of the said condition, *Quare*, if a woman which continues her Quarentine may defend the possession with force.

Trin.

406. The Lord North Chancellour of the Augmentation Court delivered an Obligation of the Queens to his servant to deliver to the Clerk to whom the custody appertained, the obligor and the servant conspired to cancell the Obligation, the Master is chargeable by the Iustices.

407. Trespassie, the Plaintiffe made a new assignment, and gave a speciall name and put buttels, by *plufors* he ought as well to prove the Buttels as the name, *quare*.

(162.)

408. *Offic' virtute brevis* was, that A. died seised of landholden of the King per Knight Service, the heir within age, it shall be intended in *Capite*; It was found by the Escheator in another country, that the same A. held of B. other land by Knights Service,

Service, B. is put to traverse of the tenure in *Capite* by the common Law.

409. The Lady Vere covenanted with A. by Indenture in consideration of &c. to assure by Recovery to A. and his heirs, land to the uses subscript, And A. also covenanted that within 8 Moneths, he would remake an Estate to the Lady for life, remainder, &c. Recovery is had, the use is not changed after the 6. months, but a Covenant lies: Baron & Lien joint-purchaser during the coverture, and died, the wife may enter in all, by 32. for it is the franktenement and inheritance of the wife.

410. One in execution shall not be dismissed by the protection of the service of the King, because *sub salva custod. per* Justices, And if by 1 *Rich. 2. cap. 12.* he be put at large by writ or commandment of the King by Bail. *Quere*, if the Gaoler be chargeable against the party.

411. He which is condemned in debt or damages had land in severall Countie, the Plaintiffe may have an Elegit in every of them for all, or he may divide his debt.

(163.)

412. A Feoffment of land holden by Knight service, to the use of himself & his wife in tail, the remainder to the use of himself and his heirs, stat' 27 H. 8 is made, the husband dies, If the heir shall be in Gard during the life of the wife; *Sanders* held he should, for the ancient reversion remains. *Dyer*, if the land had been on the part of the mother, yet the use shall goe to the part of the Father, for that a new use. But otherwise if the King had made the use, as is a diversity upon a tenure especially reserved upon a Feoffment before statute *quia emptores*, &c. and where it is created by the Law.

413. The Justices of *Nisi prius* die, the Clerk of Assise may bring in the verdicts without *Certiorare. vide West. 2 cap. 30.* 14 Ed. 3, 6 stat. *Eborum.*

(164.)

414. A man devised the moiety of his goods to his wife and

and died, shce shall have the moiety as they are at the time of the death, if the Executors have *Assets ultra*.

415. Record came out of ancient Demean into the Bank by writ of false Iudgement, the form of which Writ was *sub sigillo suo & sigill. 4. legal. homin. ejusdem curia, &c.* where it should be *& per 4. legal. hom. &c.* Also it wanted the words (*& aliud breve*) *ante le Teste*. And because the Defendant would not assent to the amendment, the Court doubted what he should doe, 4 H. 6. the Plaintiffe may have a *Procedendo* to the Iustices.

416. He which had two severall Commons in one place, and appurtenant to one house, another to another, hee may not make a joint prescription: An Indictment that where A. such a day made a Felony at H. by that W. him *apud H. pre-*
dict' arrest' & in salva custod' aduinc & ibidem habuit quous-
que defend' in predi' A. aduinc & ibid' insult' fecit & eun-
dem aduinc & ibidem felonice rescussit, &c. It's doubted if the first *aduinc &c.* make the time of the arrest certain, also if the last *aduinc &c.* may not be referred to some part of the said day, as well before and at the instant of the said said Felony, as after.

Expliciunt Anni Reg. Mariae.

Anno primo Elizabethæ.

Mich. 165.

417. **R**esolution of all the Iustices upon the statute, 1 Ed. 6. c. 7. 1. That the King may begin his reign the day of the death of his Predecessor. 2. That the Parents of the Iudges, Sheriffs, Escheat, Commissioners of Oyer and Gaol delivery, and Iustices of the Peace, are determined by the death of the King. *Contra* of the Coroners office who is chosen by writ. 3. Originall writs not returned at the death of the King are not holpen. 4. *Quare*, if *repris* after judgement may be put to execution by new Iustices.

Hil.

418. Queen Mary inhancred the impost upon cloth without Parliament, *Quere*, and if before stat^s 5. Rich. 2. (166) it was lawfull to goe over the Sea without License; *Magna Customa* was for Wooll, Woolfels, and Leather, for which on-ly custome was paid at the common Law, and *Parva customa* was that which Aliens payed over the rate of the Deni-zens.

419. Anno 8 H. 7. the Lord Audly made a feoffment, after by Indenture he recited the Feoffment to be to the intent that his Feoffees should perform his last will, and over, Know yee that my will is, that they shall stand seised for the payment of my debts, and after shall make an estate to me and to my wife in tail, &c. that is no Will because it limits an Estate to be executed in his life: also the wife was a stranger to the land and antient use, and for that cause without a state re-made by the Feoffees, the use shall not be changed by the *de-claratur supra*. But it shall remain to the husband and his heirs generall as it did before, because the Feoffment was without consideration, *per curiam*, vide 11 H. 4. & 31 H. 6.

420. Debt against Porter as Executor of wrong, and be-cause he received *per* debt, and made an acquittance, it lies well *per* Justices: so if he takes goods into his possession, for *De-venor* draweth the charge, be it Executor or Administrator, (167) And a debt lies against an Executor which hath pos-session of the goods, It lies also against a woman which takes more then necessary apparell. And if one hath colour by overseership, Letters *ad Colligend*. or by will countermand^s so that he expends about the Funerall, and a Feme Covert which refuseth after the death of her husband, all those ought to plead the speciall matter, without they administred in o-ther manner; But he which claims inteerest ought to conclude *absque hoc quod ut executor*.

421. The Patentee himself shall have a *Constat per stat^s* 3 & 4 Ed. 6. cap. 4. by the first sentence of the *purview*, S. T. Wroths case, where there are joint Patentees, surrender the in-tire Patent of an office in the Forrest; T. 118.

Trin.

422. *Taw* brought an action of debt as Executor upon an Obligation made and dated 12. Jan. The Defendant said, that the first day of *May* he caused the Deed to be written, and delivered that as his Deed to *A.* to be delivered to the testator, and *A.* proffer it, and the Testator refused it, so not his Deed, Plaintiffe demur', 1. It may not be intended the same Obligation whereof the action is brought, otherwise if the Plaintiffe had spoke of it as his deed bearing date &c. 2. The refusall made it not no Deed, but that afterwards he may accept it, and for that he ought to have pleaded the speciall matter, Judgem' if the action. *Contra* if it had been delivered as an escrow, to be delivered over as a Deed, and he refuse.

(168.)

423. Error by *Barret*, the Judgement in a *Scire facias* upon a Recognisance was reversed, 1. because the Execution awarded upon one *nihil* returned. 2. Also the writ bare date *die solis*; And holden that there shall be two *nibills* returned to have pardon of outlawry allowed. But one countervails *Sci. feci* against he who had lost debt or damages, yet there shall be two against his Executors, because they are no parts to the Judgement. It is a custome in the Kings Bench if any thing is assigned for an error, which is not, to mark that with a cross.

424. Gard by tenure of an Honor or Mannor and not in *Capite*, he shall not sue livery till a year after his full age, hee shall have *cum exitibus de tempor' plena aetate*, and that by the name of *Oustr. le main per usum curie wardum*.

425. An Information of perjury for the Queen against *Bronkard* Sherif in the Star-chamber for returning one who was not chosen a Knight of the Parliament, and he was fined and imprisoned according to the statute for the false return; But it appeared that he took not his Oath at the entry of his office per perswasion of *Hide* to whom the *Dedim' potestas* &c. and they were both fined and imprisoned for the contempt of the ancient law.

426. Distresse in the county of *Wiltshire* in a place which is

is within the honor of *Wallingford*, is driven to the castle of *Wallingford*, which is in the county of *Oxford*, *Accedas ad curiam* to remove the plaint into the Bank, was directed to the Sheriffe of *Oxford* and the Court of the taking in *Wiltshire*, which well per Court, Note.

(169.)

427. *Wils* by Deed reciting falsely that in consideration of 7000 pound payed, he incoffed *A.* and *B.* habend. iis & hered. to their proper use & uses of *A. & B.* *imperpetuum*. After it was found by Office that *Wilkes* died seised and held in *Capite*, and *L.* of full age found his heir. It was holden that the heir shall not be received to averre the false consideration against the Conuſance of his ancestor, and that the Master of the Court of Wards may not remove the Feoffees upon examination of the consideration, and retain the land *quousq; &c.* But in justice the Queen ought to render livery to him who is found heir, if he proceeds as he had tendred sure of livery, otherwise she ought to grant the ferme to the tenderers of the traverse, &c. by stat. 34 & 36 Ed. 3. & 8 H. 6. & 3 H. 8. holden that the Feoffees have the use for life *supra*, contra if the words *ad opus, &c.* had been omitted.

Mich. Secundo Elizabethæ.

428. *Hen. 8.* let to Sir *Richard Cromwell* the Forests of *Waybridge* and *Sapley*, the game passeth, the Lessee covenanted to keep 100 Deers continually during the term, (170) and such a number at the end of the term to leave, the King granted the reversion, the Grantee may not kill the Game there, for then it is impossible for the lessee to perform the covenant.

429. A *Mandamus* issued after the death of the Lord *Powes*, the Jury gave their verdict to the Escheator in paper, and after came a *Superſed'* per paroll, the *Superſed'* is good for the time, because by stat. 34 & 36 Ed. 3. cap. 13. & 3 H. 8. cap. 2. it shall be delivered by Indenture under their seals, and so holden in the Chancery, where the Escheator returned all the matter *supra*, But if executed although not returned, the *Superſedens* had

had been too late, But holden that the writ shall not be amended, *Posses* it was resolved it lies not in this case, nor in a *diem clausum extremum*, but the party was put to his traverse.

(171.)

430. A Prohibition was sued upon the stat. 2 & 3 Ed. 6. upon lute within the 7. yeers in Court Christian for tithes of wheat in 60 acres of barren ground improved, It was found that all was barren, but that of 30 acres, tithe of Wool and Lambes had been paid, and because he had brought his sute of wheat, where he ought to have such tithes as had been paid *per* 7. yeers for those 30. acres, Consultation lies not.

431. *Frencham* devised land to his wife for life, the remaind^r to C. F. and to the heirs of his body, and if it happen he to dye without heirs of his body then to H. and to his heir males in Fee simple, the remainder to the next heir males of the kin, Adjudged that the *si contingit* alters not the tail because the entent is apparent.

432. *Replegiare*, the Plaintiffe supposed the taking to be at N. in a place called the Common Field; the Defendant as termor of the demise of P. of the place in which, &c. containing 300 acres, avowed damage feasant, the Plaintiffe said that long before P. any thing had, the Bishop of E. was seised of the scite of the Mannor of D. whereof the 300 acres are parcell *per* Indenture, &c. which was confirmed, both which deeds remain on Record in the Chancery, and demised to A. for 50. yeers, whose estate we have &c. and put in our beasts, and the Defendant them tooke; Defendant demur^r and Judgment given against the Plaintiffe without argument,
1. Because the avowry is at large, except that long before be a confession and avoiding of the lease, *Quere*.
2. Also 300 acres may not be intended but parcell of the scite of a Mannor and over he had supposed the taking to be in the common field.
3. Because he ought to have shewed either the Deeds themselves of the demise and confirmation, or else the exemplification, for nothing may passe from a corp^s without deed.
4. He may not plead *que* estate of a terme & he

is a^dor & by way of title, & &c. He said not by force of which he entred and was possessed. (172.)

433. Outlawry upon judgement in debt, the Chancellour not being certified that the Plaintiffe was satisfied, had pardoned the outlawry, *ita quod stet recto* where it should be *satisfac. querent.* and upon two *Nihils* returned, it was allowed, *Quere*, of the remedy for the party: *vide* the exposition of the stat. 5 Ed. 3. cap. 12. that where one is outlawed for fine to the King in trespassse, he shall not have a Charter till the Chancellour be assured that the party is satisfied. After the yeer the Plaintiffe sued a *Scire facias*, and had execution by default, and a *capias* and an Exigent, and if upon the *Capias utlag'* the Defendant shall avoid the outlawry by plea without writ of error, *Quere*.

434. *Lane* tenant in chivalry of C. as of his Mannor of D. in the county of N. holden in *capite* levied a fine and retooke by the same for life, the remainder to his wife for life, the remainder to the right heirs of the husband, and C. being within age, was upon office found in the county of M. that he held the Mannor of O, &c. in Gard, & the King granted the wardship during the Minority to P. excepting Wards and Marriages, *Lane* died having two sons, his wife entred, the eldest died, the youngest within age, if the King shall have the ward, and the 3. part of the land out of the hands of the wife; The 3^d speak not but in case where the husband and wife have joint estate and to the heirs of one of them, and speaks only of land holden of the King. Also the youngest was not heir at the time of the death of his father. The grant to P. void because no Office in the county where the Mannor is. And *quere*, if the exception be good of incidents, &c. or if but a covenant. And if a Fine with render be a disposition of the husband for advancement of his wife. Ruled for the Queen.

(173.)

435. *Al' plur reple'* the Sheriffe returned that the Defendant claimed property, upon that a *propriet' pro band'* issued, *Quere* if

if yet there shall be proceeding in the bank, for it may be the Plaintiffe had cause to have possession of the beasts, although the Defendant had the property as a gage, or let to compasse his ground.

436. Re-entry is made upon tenant at will, by a servant and the lessor, who notwithstanding continued possession, and his rent is accepted, he sowed and severed, the servant of the lessor by his commandment entred and took the corn. It is a good commandment where the Disceisor sows, &c. But in the case *supra*, doubted if the acceptance of the rent shall waive the advantage of the Disceisin, and made them tenant at sufferance.

437. Sir John Parryer outlawed upon a Judgement in debt whereas in the originall the Plaintiffe had addition, *Sadler*, and the *Scire facias* to have execution was *Salter*, he brought a writ of Errour in which he named the Plaintiffe *Salter*, directed to Sir Anthony Brown by name, *de error' in record' process. & in redditione judicii quam promulg' utlag'*. Sir Anthony was removed & a new chief Justice of the Common pleas made who certified all: And holden without Warrant, also there is no such originall with addition of *Salter*. (174) upon which a new writ was awarded to the new Justice, and he certified the process of execution only, and no such Record of the rest.

438. A termour brought a *Quo minus*, and in his count intituled the King, that his lessor granted the reversion to *N.* who by his deed inrolled granted the same to the King, and alledged not that the grant made to *M.* was by deed, (R.) it seems well because he is a stranger. Also he doth not convey title to himself by this, and when he speaks of a Grant it shall be understood a lawfull Grant, and if he had not pleaded well, the Court ought to aid him for the benefit of the King. And in Affise the tenant conveyed to him by the Grant of *A.* in tail, the remainder to the King in Fee, and praid aid without speaking of the deed, and had it. Also in wast that the Plaintiffe had granted his reversion to whom we attuned, its good without saying by deed.

439. *Cestui que use* of land holden in *espire* before the 27. died seized of other lands holden of other Lords in soccage, the King shall have the Ward of them by his prerogative.

440. Jeofail in debt against Executor of Executor, first because the bar is not concluded with nothing in the hands of the first Executors, whereas he had pleaded that he in his life had fully administred. (175.) 2. The Plaintiffe in his replication had not alleadged that the Executor had Assets at the time of his death, but in his life, and issue upon two affirmatives, replied.

441. Between the Teste and retourne of an original writ, may be two or three terms, because no damage to the Defendant, *contra* of a *Capias* for the long imprisonment.

442. *Repleg'* nor a trespassse shall not abate by the death of one of the defendants.

443. *Scrogs* case in time of vacation of the chief Justice of the Bank; Queen Mary granted the office of the Exigenter of London, and holden void, for it is incident to the office of the chief Justice, which office the Queen her self may not use, after the Queen granted a commission to order the interest, and a bill was exhibited before them, upon which, and the Jurisdiction on *Scrogs* demur' and would not answer, and they committed him to the Fleet, but the Justices of the Bank after granted a *corpus cum causa*, because he was a necessary minister of the Court.

Hil. (176.)

444. A Juror was challenged because he was within the di-
stricts of the Plaintiffe, viz. within the Precinct of his Lectre, and holden a principall challenge although no tenure.

445. The office of the *Chirographer* and *Custos brevium*, is in the gift of the King. *Vide* form of the patent.

446. Sir Maurice Barkley 1. Ma. surrendered the office of Banner bearer to a Master of the Chancery, who recorded a *Memo-
randum* of that, But Sir Maurice delivered not up his Patent of that, It seems the Record is not sufficient to make a surrender.

447. Queen Mary licensed *Barnie* to goe over Sea to recover debts, provided that if he resort to the fugitives, the license to cease. One was sent with a privy Seal to command him to return, who being misused recame and certified a resort, &c. into the Chancery, which by *Minimus* was certified into the Exchequer, they there made Commission to seise all the lands, goods, and tenements, &c. and after *B.* recame, he may not traverse the
certifi-

certificate, because it may not be tried, but *Quere*, if the Messenger shall not be sworn, as it is in an *Affid.* for serving a *Sub-pena*. It was holden that the Queen might not revoke the License, because for a certain time, and that the resort to the Fugitives made not the license void from the beginning, but (*denq.*) shall be intended (*de iherq.*) 10 H 4.5. *simile*.

448. *Cessui que use* before 27 devised that A.B. and C. his Feoffees should sell, &c. A. died, now B. and C. may not sell: *contra*, if he spake generally of his Feoffees without naming them.

449. An action upon the stat' 1 & 2 P. & M. for leading distresse into a Forain country, because the statute giveth five pound, and treble damages, the Plaintiffe shall not have judgement of costs, although they are assessed by the Jury, *Quere*, if the Judgement shall be that the Defendant shall be taken, or in mercy.

450. The Sheriffe returned a pannell, and falsly; that it was executed by his Predecessor; the party may challenge the array for coinage notwithstanding the false return. (178.)

Esliane Fima by Wrotlesley against Adams, *Com. fo.*

451. A Termor is ejected and make regresse, yet the disseisin remains to the lessor if he will.

452. The Queen under the Seal of the Court of Wards granted the land of T. her Ward, to Willoughby habend' during the Minority of T. or of any other his heir male. Decreed that the stat. 32 H. 8. 4. of the erection of the Court of Wards, gave not authority to grant Wards which may happen after, but only of words in possession during their minority, and after till livery; or if that Ward die till office found of the next Ward. (*ou*) *supra* had construction of (*6*) *Quere*.

453. A Divorce *causa frigida natur' & perpet'* dissolved the marriage from the beginning; they both married again, and had issue, & *quia accepta ecclesia*, they shall be compelled to cohabite again; and great sute was to stay the ingrossing of a Fine, *tamen fuit ingrosset de conveyance* at 2 Baron. Burys case. (179.)

454. *Dower* against divers, some confessed the action, others demand' the view and granted, *Quere*, for although they agree in *dilatories*, yet in *Dower* which is favoured, it is elsewhere, denied.

Pas.

455. A man convict was reprieved before Iudgement for the difficulty, if he shall have Clergy, he is not Baylable, for it is intended in Bayles, that it is indifferent whether culpable or not, as it stood here.

456. Two Joint-tenants in Fee made partition after Stat. 3 H. 8. by *parol* out of the county: It was doubted if good, for the Statute is only to compell them by writ to make partition, as of Co-parceners, and for the rest it is as all the common Law.

457. The Clerkship of the Hamper was granted to Sir Ralph Sadler and to one Hales, and H. having a duplicate, Sir Ralph surrend' the Patent it self, and retook, &c. the duplicate shall not aid H. for it is made by the Chancellour without warrant.

458. A Feoffment of land in *Borough English* after 27. to the use of the Feoffor and his heir males, *secundum cursum communi legis*, yet the youngest shall inherit one, 26 H. 8. (180.)

459. The form of a Fine levied upon a writ of customes and services where it is repeated, that whereas there was a contention for Murage and Castle Ward, now the *seignior concessit quod sit quietus de predict' servic' salvis omnibus al' servic'*, Knights service still remains, for the discharge of the murage and castle Ward, which it may be are usurped, is no discharge of the reñure in Chivalry.

460. Debt against two by severall *Precipe*, and severall issues joined upon no such Record, and severall Judgements given for failing at the day, now one joint writ of error was brought, and therefore the certificate refused. And holden that now it is sufficient time, to enter the Warrant of Attourney for the first sute, and the Attourney shall forfeit every of them 10 pound by the statute of Jeofails, for there was an issue joined *supra*, although triable by the Record.

461. The Conusee of a Statute Merchant had certified into the Chancery upon *Certior.* directed to the Maior; and there sued a *Capias* returnable in the Bank, and an *Alias*, and after died; and his Executors becaule it was doubted if they may have a *Scire facias* or an *Extent* upon the first proceeding, upon oath that the testator was not satisfied, they had a *Certior'* to begin again.

462. A man bargained and sold land, *Proviso*, that if the Bargainer pay to him, his heirs or Assignes, 10 pound before *Nowell*, that the bargain shall be void, the Bargaine died, and the Bargainor paid to the Executors. It was doubted if good, contrary to the expresse words. And it seems the word Assignes shall not help him, for although Executor be Assignee in law, yet he is not Assignee in the land. (181.)

463. *Moodies* case, the father by act executed conveyed estate in *Capite* land to himself for life, the remainder to his second son in tail, the remainder to a stranger in Fee, and died, There shall be a wardship of the 3 part and of the body of the heir *per* 32. *Quere*, if but a state for life had been limited among the children, the remaind' to a stranger. (182.)

Error by *Fish* against *Brocket*, *Com. fol.*

464. The Sheriffe made an array in Attain duly, and delivered the writ and the pannell to the Plaintiffe, to take counsell of the formall return, who delivered that to the Messenger of other writs, who at the nomination of the Plaintiffe returned divers others, (183) the Sheriffe being removed, 3 termes after disavowed the return, but too late after the same term, and the array shall not be quashed because duly made at the time; But the Defendant may challenge the polls because put in at the denomination of the Plaintiffe.

465. A woman having a term as Executor, the husband submitted to an Arbitram. upon that a moiety is award to the Pretendor of title, it seems that the wife is bound, But because the Defendant in an action of Detinue brought by the feme for the Indenture of the Lease, pleaded *non detinet*, and nos the speciall matter, Judgement was given against him.

466. *Repleg'* the taking supposed in *K.* the Defendant said that the place is 40. acres parcell of the Mannor of *K.* which is his Franktenement, and avowed for damage fesant. The Plaintiff: said the place is parcell of the Mannor of *K.* in *K.* and conveyed to himself title to that *absque hoc quod dictum maner' de K. unde &c. fuit liber' tene'* of the Defendant, he is estopped to give evidence that the Defendant had not any Mannor of *K.* for the *absque hoc*, and the word *unde* implies that he had such a

Mannor, but he ought to have taken by protestation that the Defendant had no such Mannor of K. for plea that it is parcell of the Mannor of K. in K. to which hee himself conveyed title *absque hoc quod dict.* 40 acres was the frank-tenement of the Defendant.

467. A man indicted as accessory upon giving to one counsell to commit Burglary, and there was not the word (*malitiose*) in the indictment, which is in the sta. of 4 & 5 of P. & M. which takes away Clergy, and it seems for that reason he shall have his clergy; but by some, counsell to rob *burglariter* is not of malice but covetousness.

468. Account was brought by an Executor of receipt by the hands of the Testator, and the Defendant was ousted of his law because it was a receipt by the hands of another. (184.)

469. H. 8. made a Lease for yeers to *Colthurst* excepting great trees, and after granted the reversion and trees to the Duke of *Northumberland*, who demised the land and trees to B. without impeachment of waste, the Duke is Attaint, &c. the Queen granted the fee to S. who infeoffed D. in fee, and was obliged to save harmless the parson of D. and the premises touching any interest of B. per the Lease *supra* B. felled trees; D. brought a debt upon the Obligation, but because he shewed not in his replication that B. claimed the trees by vertue of the Lease, nor made conclusion with so damnified, adjudged against him for form. And as for the matter it was doubted if that be a breach of the Condition; for if it had been by vertue of a Lease of trees, he ought to have cut but branches, or take the fruit; & if by exception in the Lease of *Colth'* the trees are but a chattel in the Ki. & what profit or property the Duke had by words of the dem' of the trees without grant. And the words without impeachment of waste, made not a property in him, for if they be cut, in a Trespass brought, he shall but only recover damages for the Trespass upon the land, and for the branches. (185.)

470. In dower, issue was taken upon the death and life of the *franch.* of the Deman' and day given, *ad docend' curi'* by proofs, & there were no proofs of his life, but some presumptions given by the Plaintiff of his death in evidence, upon which the Plaintiff had

had judgment to recover seisin; *Braddon*, this tryall is not peremptory, but the Tenant shall plead over to the right of the dower.

Trin.

471. Debt against Sir *John Chichester* Executor of *B.* Executor of *A.* upon an obligation of *A.* the Defend' *A.* did owe upon a statute to *B.* 100 pound after whose death goods to the value of a 100 pound came to the hands of *B.* as Execut. of *A.* with which he payed himself, & *ultra dict. bona* the said *B.* in *vita sua* fully administred, and so nothing in the hands of *B.* &c. (186.) the Plain. said that assers in *Lond. ultra &c. tempore mortis B.* it was found for the Pl. *A.* and he had judgm. of the goods of *A.* in the hands of the Def. and damages of the proper goods of the Defendant. The Sheriff returned *Devasi* upon the Defendant, because he found assers in the hands of *B. tempore mortis*, and not upon *B.* Upon which judgment was given, that execution shall be of the proper goods and chattells of the Defendant, and if *nulla bona* be returned, it seems the Plaintiff may have 2 *Capias* or an *Elegit*.

472. Stat. 1; *Ma. c. 7.* is that although a term be adjourned, so that a fine may not be proclaimed accord. to the 4 *H. 7.* yet it shall bee also available, and holden if part be adjourned it is also aided, for it is a statute for a generall benefit, and shall be taken by equity.

Mich. Tertio Elizabetha.

473. A Lease to *A.* for life to the use of *B.* for life. *Per Curiam*, if *A.* die, the estate of *A.* is determined, *Quere* before the sta. 27.

474. The Adulterer counselled the woman to kill the infant when it should be born, the infant was born and murdered by the Midwife, in the presence and by the commandement of the woman, the woman and the Midwife are principalls, and the Adulterer accessory, because the counsell before the birth continued till after, it not being countermanded, and may not have Clergy, *vide* the president of the Indictment there.

475. Debt upon a counter-bond to save harmlesse of an obligation against *A.* the Defend' pleaded *non damnis*. the Plaintiff shewed that *A.* recovered upon a plaint in *Lond. &c.* issue upon no such record, and day was given to the Plaintiff, to have the re-

cord at his perill, Note they shall not write to a base Court, *Quere* if the Plaintiff had required it. At the day *per Mittimus* out of the Chancery he brought the tenor of the record and it sufficed.

476. Two Jointenants for life, one let his part for yeers rendring rent and died, the term shall continue against the survivor, but the rent is gone.

477. Indictment of forcible entry upon stat. 8 H. 6. was found at the Quarter Sessions and a writ of restitution granted, *Que.* if the Justices which were absent may grant a *Superfed.* But if it were at speccall Sessions none may but they who were present, except the Justices of the Kings bench who have supream authority, the King himself sitting there as is intended.

478. Two Executors one disposed his own money for the testator in pious uses and died, possessed of goods of the testator to the value, the other Execut. shall not have them, and for that cause issue was joined in detinue, that the value of them was greater then the expences.

479. Dower against 8. two confessed the action, the rest pleaded in Bar, the Plaintiffe had judgment presently for the third part of two parts in 8 divided, and after upon the Bar found for her had judgm. of the 3 part of the 6 parts in 8 divid.

(188.) 480. Assise, the Defendant pleaded outlawry in the Plaintiffe, issue upon no such record, at the day to have the record the tenor was brought, in which appeared variance in the day of the return of the exigent, and in the place where the outlawry was pronounced; The Plaintiffe also brought the tenor by a *Mittimus*, to adnull the action, *Quere* if to the purpose, because it was after the issue, notwithstanding for both causes together it was adjudged a Failer, and defend' disceit' *absq;* *Recogn' assise* according to the statute.

481. Sir Ralph Rowlet tenant in tail, the remainder over in tail suffered a recovery, he himself benig sheriff, to the use of Sir *Nath. Baron*, and for to avoid Error released all errors, and also after brought a writ of Error, and was barred by the release, yet this no bar to the issue of a writ of Error, for the right of the tail is not gone, and it seems if the issue failes hee in remainder

mainder *per stat.* 9 Ri. 2. 3. may maintain a writ of Error, although no party to the record, 4 H. 8. 2.

482. A fine of land to be amortised to St. *Johns* Colledg in Oxford was refused for defect of a writ directed to the Justices to passe such a fine.

483. In the time of *Ed. 4.* one *Davies* cut one with a dagger in *Westm. Hall* sitting the Court and threatened to hang him if he gave evidence against such a felon, the which upon indictment he confessed, and he adjudged to perpetual imprisonment, forfeited his lands, tenements, goods and chattels, and his right hand cut off at the Standard in Cheapside.

484. Array made by the Predecessor of the Sheriff was challenged, and quashed for cosinage, now the Plaintiffe is at his election to have a new *Venire facias*, to the Coroners, or to the new Sher, the trial between the Voucher and the Deman, is out of the statute of Jeofails, being not between the parties to writ.

485. At the *Pluries Repleg.* the Sheriff returned in the Bank *catalla elong' & quod nullum aliud breve, &c.* (189.) upon that a *withernam* was awarded, and according to the said writ the Sheriff returned that the Plaintiffe found pledges to prosecute, and return; and that he took 6 beasts in *withernam*, which hee had delivered to the Plaintiffe, *quousque, &c.* and that he had attached the Defend. Both did now appear, and the Plaintiff declared of the taking, and yet detaining of the Cattell, and the value of them, and they are at issue upon the property, and the Defendant shall not gage deliverance, &c. But the Plaintiff *ferr' d' aver' pris en withernam.* Note, because it appeared by the return (*quod nullum aliud breve*) that no plaint is before the Sheriff; for the first *Repleg'* gave authority to him only, and not the *Alias* or *Pluries*, for the parties have day in the Bank upon the Replevin without *Pone, &c.* It was doubted if the Plaintiffe had not appeared if he shall be nonsure, and if it was upon the *Replegiare*. And if upon such default the Defendant suggesting property, he shall have a speciall writ for to recover the beasts taken in *withernam*, or that a return shall be awarded of the first: *Leonard* said, of the first, to the intent the Plaintiffe may have a second deliverance, and it may be that after the return, the Sheriffe had made a *Repleg.* 486. The

486. The Lord *Bray* for 800 pound bargained and sold the custody and marriage of his eldest son to 4 of the Privy Council *per name*, in behalf of the King, to the intent to be married by them or their assignas, appointment and nomination without disparagement; (190.) and he seised of divers lands in *Barkshire* and *Buckinghamshire*; those in *Barkshire* he held in Chivalry in *Capite*, he covenanted to assure the land in *Buckinghamshire* to them four, to the intent to find him and such wife as he should marry by their appointment till 21 yeers of age, and then the land to remain to his son and such his wife, and to the heirs males of the body of his son, and a fine was levied to them in fee to the same intents, one of the 4 died, and the Lord *Bray* died, after which the King upon office in *Barkshire* seised the Ward, and granted the marriage to the Earl of *Salisbury*, who married his daughter to the said son by the Kings assent, and by the appointment of the survivors, after the age of 21. the son sold the land in *Barkshire* to *Butler* by fine and recovery, and died, the wife entered; and *Butler* brought an entry *en la quibus*, and all the matter *supra* given in evidence, upon which demur. 1. If the father may grant the marriage of his son. *Weston, Catlyn, & Saunders* held he might not, it being a prerogative inseparable in his person, and therefore the grant is but an authority which is ended by the death of the Lord *Bray*; as also by the death of one of the Grantees, for authority may not survive as an interest may: But *Browne* and *Dyer* held it is an interest and the words without disparagement is parcell of the contract and not confidence only, but *Dyer* agreed that the death of the Lord *Bray* had determined the Grant, in respect of the interest of the King by office since found; also by the Grant of the King under the seal of the court of Wards, the King shewed that he waived the other interest, & then the joining in marriage of the son is not to the purpose, but it shall be the marriage of the Earl of *Salisbury* only; as where one had the nomination, and another the presentation to an Advowson, (191.) grant an annuity to *H.* till advanced to a Benefice by him; although he present *A.* at the nominat. of the other, the annuity is not gone, for it is no promotion but of the nominator. So of a Clerk that

had

had been in above six moneths upon presentment, usurper resigns, and the patron made a grant *ut supra*, and after the Grantee is presented by the usurper and patron, for it is the presentment of the usurper. So in the principall case the wife is not married by the appointm. of the 4. for where divers join in an act, the law only adjudgeth them actors which have authority to doe the same, for that reason the land is only in the son, and his Grantee shall enjoy it against the wife, and so adjudged; It was moved the wife was not known at the time of the estate conveyed, which she shall never have. But cleer being by way of use, as by *Brown* the word intention countervails an use, she shall take very well after she is known.

487. The King gave land to the husband and wife, and to the heirs of the husband, the husband made a feoffment to the use of himselfe and his wife for life, and after their decease to the use of their youngest son for life, and after his decease to the use of himself and his heirs and died, now because the woman claimed her ancient estate, and her entry was congeable upon 32 H.8. she is remitted, and the 3 part shall not be in ward.

(192.) 488. *Ejectione firme* against a woman, who justified because the wife of a copy-holder, which ought to have for life, the custome was traversed, the Defendant gave evidence of a Widows estate only, it shall not maintain the issue, but if (*tantum*) had not been, *Quere*.

489. An attachment of priviledg in a Trespasse by an Atturney against *Kemp*, returnable at a certain day, and not at a common day, and the Defend. was after condemned in another Trespasse of priviledg, and a *capias ad satisfac* issued returnable after the said day, the Sheriff at the first day brought the party, and returned both the writs, but said that his intent was not to return the execution before the day, and that for policy of escape, yet at the Prayer of the Plaintiff the Sheriff was discharged, and the Defendant committed in execution to the Fleer. *Quere* of a *Capias ad satisfac* in an attachment of priviledge, because a *Capias* nor proceffe of outlawry lies in the original; *Quere* also upon a recognizance.

490. *Brown* upon a *Capias utlag*, in debt returned against him

Not

Non est inventus, he came *gratis*, and would have pleaded that he was not abiding at the place alledged the day of the purchase of the originall, nor never after, &c. he shall not have the plea, for the Plaintiffe is out of the Court, and it is not known whether he be the Defend^r; if he came not in by ward by return of the *Cepi corpus*.

491. Tenant was obliged to *A.* to the use of a feme sole, which he intended to marry, & delivered the deed to the woman, saying, This will serve, she delivered that to *A.* and married *T.* who died, in debt against, &c. adjudged a sufficient delivery. (193.)

492. Tenant in *Capite* in Chivalry to defraud execution of 300*l.* recovered against him, made a feoffment with condition to redeem *per* himself or his heirs for 20*l.* he died, his heir within age, he shall not be in ward, for it is not within the clause of the 32 for advancement of his children, &c. and if only to defraud the execution and not the King (which is inquirable) shall not be in ward.

493. Avowant before the *Venire facias* with *Proviso* served, now he prayed *decem tales*, and by the Court he shall have it as well as the Plaintiffe because the first pannel at his sute.

494. *Kemp* in execution for damages in trespassse brought an attaint, and had a writ *de manucap'* to the Justices of the Bank to let him to Mainprize to pursue with effect, and to render his body if &c. which was doubted because it had not been used in the Common pleas, although presidents of that in the Kings bench, at length upon *Manucap'* taken as well for the King as the party, he was dismissed. Another time the Guardian of the Fleet was commanded to have the party in the Court *quolibet die pendente placito*. After upon agreement satisfaction acknowledged, and recognizance discharged as to the party, yet they would be advised as to the King.

495. Sir *William Gascoigne* acknowledged a statute, and after infeoffed the Conusee of part of his land, and conveyed the other part to his son, and to the wife of his son for jointure, the Conusee sued execution and was barred upon an *Audita querela* brought by the son alone without his wife. *Nota* the *Venire facias* to the Conusee gave not day to the Plaintiffe, and the

the Defendant answered upon the writ of *Audita querela*, without hearing of the writ, and without declaration: In an *Audita querela* the Plaintiffe shall not recover costs or damages; and for that interlesse in the Judgment although found by the Jury. The *Venire facias* had a *Superfedeas* in it. (194.)

496. The Bishop of *Coventry*, &c. patron of two Prebends, granted the next avoidance *alterius eorum primo vacant*, the Dean and Chapter confirmed, the Bishop died, a Prebend void, the Successor presented, the Grantee brought a *Quare impedit* within six months; and two years after the issue was found for the Plaintiffe, and the avoidance plenary, and the writ brought within six months, and the value of the Church per the year, the Bishop died, yet the Plaintiffe had judgement, and is at election to have a writ to remove the Clerk to the new Bishop, or to the Metropolitan, and holden that the *Quare impedit* shall be brought where the Cathedrall church is, and not where the body of the Prebend is.

497. Trespasse in two closes, the Defendant justified in one and pleaded *non culpable* in the other, the one found for the Plaintiffe, the other for the Defendant, the Defendant may have judgement for his part of the verdict though the Plaintiffe will not, and the Plaintiffe may also pray judgement for the Defendant to the end to bring Account. Hil. (195)

498. Queen *Mary* reciting the grant of the custody of the Castle of *Colchester* by H. 8. to the Lord *Darcy* (misreciting the date) which premises *in manib. nostris sunt per forisfact. seu sursum redd.* the Lord *Darcy* granted the custody to *Kemp*, and said not the office of the L. *Darcy*, and Queen *Mary* died, the Queen now granted the office to *Mackwill*, who entred upon *Kemp*, and he brought an assise, and the Jurors challenged to be within the distresse of *Mack*. at the time of disseisin, viz. tutors to the hundred there holden by the Defendant. *Quare*, but upon the verity they never made sure, &c. and so they were sworn, *Kemp* gave in evidence a surrender of the Lord *Darcy* before *Hare* Master of the Rolls, which was not recorded, nor the patent cancelled, nor the *vacat* entred in the life of *Hare*, and doubted if it may bee recorded after his death. Also no time is shewed

shewed of the Surrender, and if it were not before the Patent of *Kemp*, viz. his patent is void: And for the Defend' the misrecitall and non-certainy by which means the Queen came to the office were given in evidence, for the stat. 4 & 5 P. & M. excepted misrecitall in Ooffic. and it was found for the Defendant no disseisor. It seems that the Grant of the custody of the Castle is as good as the grant of the office of the Constablenesship.

499. Recovery against *Batman per Non sum inform'* in an action upon the case brought in the Kings Bench for turning a Water course from the Mill, the Plaintiffe for damages found upon a writ of inquiry, &c. had a *Capias ad satisfac'*, and an Exigent, and Thrice exact' returned, and no more counties holden between the Exigent and the Return, upon which *Exig. alloc' com'* issued, and the party outlawed, and the outlawry returned into the Kings bench, upon which the Defendant *grat* is rendered himself to the Marshallsee, and made suggestion of errors in the judgment, and had a *Scire facias* returnable two terms after, & the court took 4 *Mainpera'* every in the intire sum, and he put at large to pursue, & in the mean time he shewed a writ of Error *tam in judic' quam in promulg. utlag. que coram nobis*, &c. and at the day of return he assigned Errors, because no day given to the Complainant, when the writ of inquiry of damage was awarded, *Quere* if it be needfull, *sed quoad hoc*, because the Court may not correct their owne judgement, the writ abated, but for the awarding of proccesse and promulg' the outlawry before the Coroners, the writ maintained, and the outlawry reversed, for proccesse of outlawry lies not in the original, and then a *Capias ad satisfac'*, and a *Capias* upon that is an Error, for in this action he shal have an *Elegit*, or a *Fieri facias*.

500. Sir Robert Catlin purchased land in *Capite*, to him and his wife, and the heirs of the husband without licence, (196.) the Queen pardoned all offences *pro quacumq; alienac' sibi facta*, and although without speaking of the wife, the pardon allowed, and he discharged in the Exchequer.

501. The Condition of an Obligar' was if the obliger pay all sums which *J. S.* stands obliged in to *J. D.* per deed obligato-
ry

ry to pay, that then the Obligation shall be void, the Obliger in a debt may not plead that *J.S.* stands not obliged in any obligation, but he is estopped to deny the speciall recitall of the Condit^r, adjudged upon Demur^r.

502. *Lee* Citizen of *London*. was indebted to a Forainer upon an obligation, and the Forainer to him upon a simple contract, the Forainer died, the citizen (as he may by the custome) upon oath that it is a due debt, had an action against the Executor of the Forainer, and upon 4 defaults recorded he attached the debt in his own hands, according to the custome of certain attachments, and the Execut. found Mainprise, that if he could not disprove the debt within a yeer and a day, that so much should be recovered upon the obligation, and in a debt brought by the Executor of the obligation, and this attachment pleaded, it was demur^r whether it be a good custome, and as well between Forainers as Citizens; also because judgment was, that the Plaintiffe shall have execution upon the debt attached, and no judgment that he should recover.

503. *Hungerfords* case, A man delivered money to deliver over, and after brought an accompt against the Baylee, by his own hands, the Baylee pleaded never his receiver, the matter *supra* is not a good evidence, (197.) for it proves he was a receiver conditionally, viz. if he had not delivered over; and before Auditors he shall not have allowance but ought to plead the speciall matter.

Pas.

504. *Lassels* was taken in execution upon a *Capias ad satisfac^t* out of the Kings bench, and there issued a writ of Prerogative out of the Exchequer to have his body, teste day before the arrest, and the return before the *Capias*, upon which the Sheriffs of *London* where he was taken brought his body into the Exchequer, and there shewed the cause of the detainer, to have the body at the day of the return, &c. and thence the prisoner was committed to the Fleet in execution for the said debt, and also for the debt to the Queen which he also confess'd in court after *Habeas corp^s* came from the K. Bench, at a day, &c. the Warden brought the body, and shewed all the matter in his return, *Ideo remannde.*

505. *Scire facias ejusmodi*, For the first Patentee of a Parkship upon disturbance, to revoke a latter patent. For the King to adnull the Auditorship upon breach of the condition. For the K. to adnull the remembrancer of the Excheq. offi. granted upon false suggest. viz. to the son of Baron Blage, *habu'* after forf. surren' &c. his father, where in verity the taking of the Baronship *quamdiu placue'* determined the offi' of the Remem' which the father had for life. (198.) For the King to adnull the office of the Serjeant at armes to bee exercised *cum Cancellario* for not attending: For he which had a Bailwick of inheritance, where the Patent is made of the said office, and the Patent was revoked *salvo jure cuiuslibet*. For the first Patentee of the clerk of the Crown upon disturbance by the lecond: It seems that by the said *Scire facias*, that the officer of record shall not bee removed without a *Scire facias* of record. In a *Scire facias* to adnull a Patent the cause is put: *contra* for a subject.

506. Upon a *Scire feci* returned and default, or two *Nihilis* which countervail a *Scire feci*, judgment shall be that the Patent shall cease.

507. The Plaintiff and Defendant both challenged one person, and before the court would have him drawn out, the Plaintiff would have released his challenge and might not as it seems.

508. Upon a distresse in attaint the Sheriff made a pannell but returned not that till the essoin day of one return after this writ returnable, and for that he was amerced 20. l. and the Jury discharged although the parties requested the contrary.

509. Lessee covenanted to repair at his proper costs; the house decayed in the Grunsells, the Lessee cut trees upon the same land and repaired; the Lessor brought a writ of Waste, the Lessee justified for reparations, the Lessor may not reply by the covenant, for as to that he is put to his action of covenant, so if the Lessor covenant to repair and did not, the Lessee may cut trees, and justify in waste. (199)

510. The Sheriff attached one by his goods, he ought to return the certainty of the goods, and the value, and it is not sufficient to return attached by his goods to the value of 10. l. for the goods shall be forfeit if he make default at the day of he return,

511. *Gales*

511. *Gales* case in a fine as that, the Conusee rendred to the Conusor in tail, the remainder to himself in fee, the Conusor died without issue, the Conusee brought a *Scire facias* to execute the remainder, and holden that it is no remainder but a reversion, and also it is a fine execut' being as that; But if it had been a fine executory, he shall have a *Scire facias* in reverter, but now he is put to a Formedon.

512. A man justified in a trespassse, by seising of beasts by the custome that the Lord shall have the best beast, &c. and said not *pro heriotto*, and if the best beast be effoined, he may seise the beast of a stranger *levant* and *couchant* upon the land, and shew that the best effoined; and that tenant, &c. and it was adjudged, an unreasonable custome, also the form was evill.

(200.) 513. Before statute 27. a man infeoffed divers, one being his own wife, to the use of himself and his wife for life, &c. the statute of 27 is made, the husband died, if the feme shall have the possession by the seoffement, or the use and possession by the statute, *Quere*.

514. At the *Nisi prius* a full Jury appeared, but yet but two Hundredors, the two were sworn, and the Plaint' had a *Tales de 2 circumstant. Hundred*. they were sworn and annexed to the 8 of the principall pannell, and had not a *Decem tales de circumstant.* for that the principalls were approved indifferent, saving that he failed of Hundredors.

515. The King let a meausage rendring rent for yeers, the Lessee after took a Patent of the office of the custody of the said house, it seems it is a surrender of the Lease. *Trin.*

516. *Cheney* levyed a fine, and after brought a writ of Error to reverse it, and assigned *nonage* and had a *Scire facias* against the Conusee, and upon two *Nihilis* returned the court proceeded, and by witnesses and inspection they reversed the fine: *Cheney* sold the land to others, upon which the first conusee entred, and the vendees brought an entry upon disseisee, and against the judgment before, the tenant gave an exemplific. of examination, of witnesses in the Chancery, proving him to be of full age in evidence, and although to the court it seemed not available against the judgment, yet the verdict passed with those witnes-

ses, which was after affirmed in Attaine. *Widē postea* 202.

517. *Austin* brought an attaint against Executors upon verdict given in a *Quo minus* brought by the Testator as termor of the K. supposing they held the land, and *per Cur.* is lieth well against the Exe' by the equity, sta. 23 H. 8. for the stat. was made in mitigation of the rigor of the common law, and shalbe taken by equity; and the words against the party, which hath judgme' the superfluous, for it lies against whosoever hath the thing which was lost; the Executors pleaded a concord by their Testator for the interest of the Pl. upon which the Pl. dem; the Pety Jury pleaded the generall issue, and by the stat. 23. the Grand Jury shall be charged upon this issue hanging the other matter indiscussed. Note two of the Pety Jury challenged the array, which was tryed against them; if the other challenge the polls they ought to shew cause presently, for as if they had been quash' all should have had advantage, so that they have disadvantage now.

518. *Ellen Lambert* brought an appeal of Rape; and doubts were upon the count, because it was not averred that she did not assent; for then the sute is given to the K. by way of Indict' nor the conclusion is not *contra form. statuti*; also it was not said *felonice rapuit*; & holden that the Def. may have his Clergy now although *Bigam'*; but it was *Quere* being in appeal, if he shall without purgation, *vide Stat. 139.* also if the Queen may pardon the imprisonment and burning in the hand. (202.)

519. *Clere* brought an accompt as Administ' the Def. plead that the dead made Exec. who proved the *testam'* & administ' at D. who is in full life, judgment if the action, and because he did not traverse the dying intestate; the Plaintiffe demur.

520. Attaint upon verdict in *Norwich* upon stat. 29 H. 8. the Corporation demanded consufance of attainrs by speciall name in their Charter, but the statute is that all attainrs hereafter to be taken, shall be taken in one of the Banks, and in no other court; therefore it was denied.

521. *Thomas in Gray* brought a dower; the tenant vouched the heir in the same county, who entred as he who had nothing by descent in fee to render dower, the tenant averred that he had assets by descent, *Quere* if he ought not to say in fee, for by

vestors

Weston and Browne, if he had in tail that shall not save the land of the tenant, *Quere*, the opin. of the court was that the wife should have judgm^t presently against the heir if he had it, and if not against the tenant, and that before issue tried of the assets.

(203.) 522. An indictment for celebrating private Mass against the stat. of 1. of *Eliz.* and note that wherein the printed book the Parliam. began the 23 day of *Apr.* in verity it did not begin till the 25 day, for the Q. *propter agnitudin.* discharged the appearance for two days. Also clerk is a sufficient addition for a Priest or Minister, and he is within the stat. had he cure or no.

523. Execut^r recovered in an accompt, and the Def. in Execution for the arrearages, and after the testam^t was adnulled because the Testat. an Ideot, and he in execution sued an *Audit.* *Querela* comprehending this matter, upon which the Exec. dem.

(204.) 524. Courts holden at *Hartford* castle, yet the Warden of the Fleet shall have the prisoners of the Common pleas, Star-chamber, Exchequer and Chancery. But it was doubted of the Duchy court, because the castle is parcell of the Duchy, that the constable of the castle shall have them.

Mich. Quanto Elizabetha.

525. Upon *Nihil dicit* in wast, a writ issued that the Sheriffe in proper person should go to the place wasted, and inquire of damages, and holden good, and not to inquire of wast, for that is confessed, and requires not that he should go in his own person according *West. 2. c. 25.* for that is only to inquire of wast, where the Defendant makes default at the distresse.

526. Debt upon an obligation against the heir, it is no plea that the Executors have assets, *per Curiam. Capell.*

527. Tresp. upon 5 R. 2. in 3 acres, issue upon gift in tail for 2 acres, and upon allotment upon partition for the third. The Jury gave open verdict of 2 acres, one for, and the other against the Pl. and they were sent back to agree of the residue, and after they gave private verdict of all for the Plaintiffe, and in open court on the morrow only gave verdict of the the third acre, without speaking of the alteration, yet upon great deliberation the Plaintiff had judgment of all. (205)

528. One arraigned of Treason stood mute, he shall have judgm^t as upon conviction. L 2 529. Ju

329. Justices of Gaol delivery who had commanded respite of execution of a prisoner, they may in vacation after adjournment of the commission, command the Sheriff to respite over the first day, by the custome of the realm.

330. If it be entred of record at one Sessions *quod non legit*, and the prisoner is for some cause reprieved, & at the next sessions he can read, he shall then have his clergy in favor of life. And by the 34 H. 6. he shall have his clergy allowed under the gallows, and the Gaoler shall be punished for his contempt in suffering him to be instructed.

331. The Conusor of sta. had a Rent-charge, and before extent, he purchased parcell of the land, the rent is gone, and shall not be in execution, but otherwise it had been if he had purchased after extent of the rent as it seemeth: and see that tenant by Sta. or *Eligit* may make Avowry for Rent-charge; a writ of Extent was awarded in the time of Qu. Mary returnable *Quind. Mar.* the writ executed by inquisit. in time of the Q. but before the return she died, and yet it was returned, and a *Liberate* granted in the Queens time which now is. *Quere* if the return of the extent were without warrant. (206.)

332. Outlawry was reversed upon sta 6. H. 8. without a writ of Err. because the usuall words put in the writs of Proclamat' viz. *fac' tribus separalib. dieb. unde una proclam'* &c. were omitted by negligence of the Exig. by which the writ was not sense.

333. A man made a lease for yeers to begin at a day to come, and before the day the reversion is granted over divers times; after the termor entred and made wast, & the fourth Assignee brought a writ of wast, and counted upon assignm' and tenure of every one of them, to whom the land came after the Lease, although no tenure before the Lease begun, yet well, and so the Register.

334. A *Certiorare* to remove a record captain *Curia nostra*, &c. where it was taken in time of the predecessor, the record shall not be removed by that. (207.)

335. A Lease within the yeer of 31. of woods saleable by the common woodward of the Abbey *per* parcell every yeer, and 7 miles distant from the house, and there was nor any *estovers* of that

that employed at the house; because it never was in Lease before it was void by the stat. for although it be not immediately spent in hospitality, yet it may be it was reserved in store for that purpose. In an *Assise* the *Termor* may not plead in bar, but justifie by the Lease, so in without wrong, and if the Tenant of the freehold be not named, he shall say no Tenant of the frank-tenement named in the *Assise*.

536. One brought a *Wast*, and counted that an Abbot was seised, &c. of one house, and 30 acres of land, &c. and demised to the defend' and that after by surrend' and the act of the 31. the K. was seised, and granted to the Pl. and his heirs the aforesaid tenement by name of the Manor of C. with appurt'; the Exception that there are not words sufficient in the count to carry to him the lands let, so as that he may maintain a writ of *wast*, for the *per nomen* may not maintain the Grant of the land in Lease without averment that those in the Lease are parcell of the Mannor, yet judgment given to the contrary, and Error brought upon the same. (208.)

537. *Owins* case, debt and damages recovered, the Defendant died before execution, a *Scire facias* issued against the heir and all the lands which were to the Defendant the day of the judgment, and upon that an *Elegit* as upon a recogniz. And it seems not to be needful to have a *Scire facias* brought against the Execut' no more then upon a recogniz' per *st. w. 2. c. 18.* as wel goods as lands are subject to the *Elegit*, *Ideo Quere* if he wawe to have execution against the Executors, and have it sole against the heirs, &c.

538. In debt against Executors, issue assents in their hands the day of the writ purchased, &c. evidence for the Plaintiffe that the same day 100. l. was payed to the Executors in the Prerogative court, and a good proof for the day is intire; and although the Def. shewed that by order of the same court he presently paid it over; that is not to the purpose, but peradventure upon speciall pleading it shall not be assents.

339. The form of a writ of *wast* against the Assignee of a term per 3 *Ass.* of the reversion.

540. Array challenged by the Lo. *Hastings*, because he is a

Lo. of the Parliam. and no Knight returned, and a writ issued to the coroners to make a new pannell. (209.)

541. Inquisition taken of D. of land in S. without shewing in what county D. or S. is; adjudged insufficient, for it may not be tryed if it should be traversed, for fault of consul whence the visne should come, Office found that he died seised, but argumentative, not good.

542. The President of *Magdalen* Colledg in *Oxford* deprived by the Bishop *de wine.* their Visitor shall not have an appeal to the Delegates, for that deprivation is temporall, not spirituall, therefore out of the stat. 25 H.8. and he is put to Assise.

543. *Quid juris clamat* by *Saunders* against *Freeman*, *Plow.com.* A Lease for yeers upon condition that if the Lessor grant the reversion, the Lessee shall have fee, the Lessor levied a fine, the Conusee brought a *Quid juris clamat*; the Termor claimed fee, it is no forfeiture, for the condition was repugnant. *Nota* the judgm' there that the term shall be forfeit, the Conusee may enter, & the fine shall be ingrossed. *Phelingtons* case 6 R. 2.

544. Tresp. against 2. the Defend' severally claime to have common in the place where, &c. appendant to the Mannor of D. whereof they are several tenants, which Mannor was holden of the K. as of the Duchy of *Lancaster* in chivalry, and which was in ward to the K. by nonage of the heir, the ward of which the K. had granted to one of the Defen. under the seal of the Duchy, rendring 20 l. per an. and prayed aid of the K. and had it, per words *sequatur penes Dom. R. & proceden'* after awarded in the name of the K. and not Duke, so by the name of the K. the name of Duke is drowned, for he may not be a Sovereign and a Subject, 3 H.6. (210.)

545. Debt against 2 Execut', one appeared & confessed the Action, the other made default, and judgm' given to recover of the goods of the Testator in both their hands; and to the same effect issued a *Fieri facias*, the Sher. returned *Nihil*, but he which made default had and *devastavit ante receptionem brevis*, upon which a *Scire facias* issued only against him who had wasted, and upon default, upon *Scire feci* returned, execution was awarded of his own proper goods only, without his companion, 3 H.8. fol. 209. Hill.

Hill. 546. A devise that the Execut' shall take the profits of his land untill the heir shall be of full age to pay, &c. one died, after the other made his Executor and died, the Executors of the Executor last dying, shall take, for it is an interest which survives; *contra* if it had been but authority.

547. *Dubitatur* upon stat. 13 H.4.c.7. If Justices of Peace are bound to inquire of a Ryot within a month at their perill of 100*l.* without notice given, for the stat. speaks not of notice, a Township shall be amerced for escape of a Murtherer in the day time, although the murther be committed in the field.

548. *Scire fac.* to execute a fine, an estrepement was granted, one which had ancient woods before the *Scire fa.* was prohibited by the Sheriffe to cut, *Quere* what remedy, both writs issue out of the Bank.

549. In a plea of *land view* is not grantable, nor jointenancy, nor non tenure pleadable after imparlance. (211.)

550. Sir R. Ch. Patentee of a Receivorship upon condition, he broke the conditi. there needs not to be an office found of that to repeal the Patent; notwithstanding the Patent is not void, for being an officer of record, it behoveth to have *Scire fac.* of rec. to repeal it. *Vide ft. 11 H.8.* which made the off' of those who shall be absent when the K. is in distress with the rebels to be void, &c. and that notwithstanding the opin. of *Rast. War. 8.* that stat. is not detorm' by the death of H. 7. and attendance shall be only (upon that penalty) to that K. which advanceth, *vid. 19 H.8.c.1.*

551. If the Jury in a Leet refuse to make presentment the Steward may assess a fine upon every of them for contempt & concealment, and if the homage in court Baron refuseth, if they are copyholders it is a forfeiture.

552. Exigent is returnable by the roll *off. Mich.* but the writ of Exigent was returnable *Mense*, the Defendant was outlawed at the county day between *offab. & Mense*, Adjudg an Error, for the roll is of more credit. *Pas.* (212.)

553. By the better opin. though the stat. 28 H.8.15. ordained that commissions of Oyer and Terminor of Pyracy, shall be awarded to the Admirall and others to be named by the Chancellor, yet the Lo. Keeper being no Chancellor may grant; for

it is not a Iudiciall act, but only as an Officer, and for necessity of Justice also. But others held *Contra*, because penall statute.

554. If the Defendant in attaint give new matter in evidence to inforce the first verdict, as they may, the plaintiffe shall have a respite to disprove that, but the Plaintiffe may not give new evidence, nor inforce the first by new matter disclosed.

555. *Quid juris clamat* the tenant claimed Fee, in part, and returned for the other part, and yet the intire Fine ingrossed *sans forpris*: yet 18 Ed. 3. in *Per que servitia*, where it was found that one of the tenants name *non tenuit*, &c. was ingrossed *tantum quoad residu*.

556. If the Sheriff return Rescous, the party shall have traverse *per parol Convincatur* in *West. 2 cap. 40.*

557. A lease for yeers of the Greyhound in Fleetstreet, with divers implements, rendring rent, the lessor entred and made a Feoffment, the Lessee re-entred, and for rent behinde the Feoffee brought a debt, & adjudged maintainable although no privity. And this by 5 H. 7. where the Devisee brought a debt. And it was not extinct but only suspended, til the termor by his regrest revived the Reversion, and shall not be apportionment for the implements, for *magis dignum iurabit*, and not the reversion of the Chattels, & it is not like where they are evict, for here the lessee continued his term in them. (213.)

558. Office found that the tenant died seised of land holden in soccage in *capite*, and also of other lands holden in Soccage of a common person, his heir of full age: It was ruled he shall not pay *primer seisin* of those holden of others, nor of other lands holden in soccage of the King, if not in *capite*.

559. A woman tenant for life, the remainder in tail, tenant for life with her husband levied a Fine as that &c. and by that released and quite claimed to him in remainder, who by the same Fine rendred to the Conusors a rent, proclamation passed, the woman died, tenant in tail died, the issue shall avoid the rent as it seems; so *Thornton, Com. 435.* for the rent is not a thing intailed.

560. *Officium Hostiarum de Scaccario cum diversis officiis ad idem spectant* is holden of the King by Grand Sergeanty as appears in records *de tempore Ed. 4. Vi. 8. Assi.* 61.

561. *Tales* of 60 was awarded in appeal of robbery, 15 H.8.

562. In an action brought in another county then *London* or *Middl.* the writ of proclamations as it seems needs not, and if he had false addition of the county he may avoid the outlawry, by the Stat. of Additions, 1 H.5. But if an action be brought in *London* or *Middlesex* (214) and the Exigent awarded there, it behoves that the writ of Proclamation goe to the place where the Defendant is abiding at the time of the Exigent awarded by statute 6 H.8. But if he be named *nuper de London, alias dict' de N. in comit' R. gent'*, there if the Proclamations goe into *R.* where in verity the Defendant is dwelling in *Middlesex* he shall without writ of Error avoid the Outlawry per 6 H.8. for the *alias dict'* is not any part of his name. *Trin.*

563. A man condemned *per non sum informat'* in action upon the statute 8 H.6. for treble damages, for this condemn' is a conviction, So in wast upon *nihil dicit, non obstant' stat. Glo. cap. 5.* speaks of attainter in wast. And there if *diem ad iurari'*, although the pannell be not returned, the Plaintiffe appears not, he shall be non-sute, for the parties are demandable before the Jury.

564. Four yeers after Judgement in debt, the Defendant being in the Fleet for another cause, he was brought into the Bank by *Habeas Corp'* and upon examination it appeared he was the party against whom the Judgment was given in the action of debt, for that he was resent into Execution for the debt; Note without a *Scire facias* after the yeer and day. (215.)

565. *Stones* case, a man committed two Felonies whereof for one Clergy lyeth, but not for the other, *viz.* Murther and robbery, he was first arraigned of the Robbery & found culpable and prayed his Clergy, and had it, and *non legit*. Afterward at another day being repy without Iudgement, he was arraigned for the Murther and found culpable, and now prayed Clergy again for the Robbery, and had it, and *legit*, &c. But not burned in the hand, nor delivered to the Ordinary entred, which is the Iudgment, and therefore after had Iudgment to be hanged for the Murther; but if the said Iudgment had been entred, he had been discharged of all other Felonies before this conviction. *Vide* now *stat. &c. Eliz. cap. 7.*

566. *Venire facias* with *proviso*, not grantable to the defendant, but where he is actor, or otherwise where there is laches in the Plaintiff, but one time laches sufficeth for all, the sute. But if, after the *Venire facias* with *Proviso* pursued by Defendant, the Plaintiff sued another which is returned, and not that of the Defendant because here the laches of the Plaintiff appear not upon Record, the Defendant shall not have a *Habeas Corpus* cum *Nisi prius cum proviso*, except there be a new laches in the Plaintiff.

567. After the 4 H. 7. of a man plead upon a *Scire facias* to execute a Fine, *quod partes finem nihil habuerit*, he ought to say in possession nor in use, according to the same statute.

568. Tenant in tail levied a Fine, error in the Proclamation is no cause to reverse the intire Fine, but it shall be a Fine at the Law notwithstanding. (216.)

569. Sir Robert Cheffers case, that where the Stat' 1 Mar. dissolves the augment' Court, the office of the receiver for the lands of the said Court is dissolved, for it is incorporate to the said Court, But by *Proviso* in the Act the Fee remains.

570. *Formedon in reversion*, the Donor need not to shew the Pedegree of the issues of the Donee, nor who was last seised, but *quod post mortem* of the Donee without issue, &c. for he is a stranger to the Pedegree, *Contra in Formedon in descender*, *Quere*, of a *Formedon en remainder*.

571. An Obligation with Condition to perform the award of A. arbitrator indifferently chosen by the parties to the arbitration, for Dilapidations, &c. and of all other sutes, *Quere*, &c. between the parties, so that the said award be made and delivered in writing, &c. A. made Arbitrum in this forme, viz. The award of A. indiffer' chosen by t. for the behalf of the Obligor on the one part, and by the Obligee on the other part, and that was onely of Dilapidations, with protestat' that hee would not meddle with the rest; and upon *nullum fecit arbitrium* in issue, that *supra* was the speciall verdict; And it was doubted if the award may be intended between the parties to the Oblig' or that the words in the behalf &c. shall be void; But it seemes good between the parties But it seems the Arbitrator had disabled himself, because he had not arbitrated all, for the submissi-
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on was conditional, so that the same award; But if it be a subm. absolute of 2. things, the award of one only shall be good. (217)

572. Five things incident to an award, matter of controverſie, subm^y, parties to the submiſ. Arbitr^y, and rendring up the ward.

573. A *Venire facias* with *Proviſo* was returned ſerved, and put upon the file, and two houres after a *Venire facias* which was after purſued by the Plaint^r, was returned, and filed alſo, every party purſued a *Hab. Corp^s* which are returned, now the Plaintiffe failed of his *Jurat^s continuand^s* is not a diſcontinuance, for the continuance by the Defendant ſufficeth, and no diverſity is between the entry of the one or other.

Mich. Quinto Elizabetha.

574. A Transf. of Recognizance in the Chancery came into the Bank, & *non allocat^s* to have a *Scire facias* upon that.

575. A Covenantee releaſed actions, ſutes, quarrels, debts, executions and treſpaſſes before covenant broken, he is not by that barred in an action of Covenant. *Querela* is a caſe of action, *Actio eſt juſ proſequend^s in judicio, &c.* (218.)

765. A Cond^s of an Oblig^s, that the Obligor upon request ſhall do all ſuch Acts which ſeem reaſonable to the counſell of the Obligee, to releaſe the Obligat^s, in which the Obligee ſtands bound to the Obligor, request was made to ſeal a releaſe of all demands to the Obligee, and to one *M.* and averred that no other matter between them, but ſpake not of *M.* the request adjudged unreaſonable, although there be no matter between the Defendant and *M. Forteſcue* againſt *Strode*.

577. At *Niſi prius* the Jury after departure recame, and ſaid that they all but one who had eat Pyer and drunk Ale were agreed, who would not agree; they were ſent again at the request of the Plaint^r, and gave verdict for the Plaint^r. and good, and day given in the Bank to aſſeſs the fine upon the ſaid Juror, & there it was aſſeſſed to 20 *l.* and the Plaintiffe had Iudgement.

578. Submiſ. by Oblig. So that the award be made and given to the parties, or one of them before &c. in debt upon the Obligation, it was holden it might be delivered by word, and to one only of one part.

579. *Pophams* caſe, a man bargained and ſold to one, and after

to another, the first deed was inrolled, after the second and also the last day of the 6 month, accounting the day of the date for none, and yet by the Court the first Bargainee shall have. So see, from the date which are the words of the statute and the same sense, as from the day of the date, 28 dayes are a month. (219.)

580. The opinion of all the Justices, that the stat. of 32 H. 8. cap. 33. shall be understood of the descent upon every Disseisin, although the words are of entries with strength.

581. A man devised that after the death of his wife, his land should be sold by his Executors, *una cum assensu A.* and made his wife and a stranger Executors, and died, the wife died, A. died, the authority is determined.

582. A man bound to deliver the Key of a house and quiet possession to the Maior of London to the use of the Obligee, every one being out of the house, he insealed the dore, and delivered the Key to the Maior out of the view, a stranger pretending title entred, It seemes that it is in delivery of possession, yet the verdict, *contra*, and after affirmed in attainr.

583. A man declared of a debt of 20 l. upon a sale of Woods, and gave evidence but of 20 Markes, it shall be found for the Defendant, as if there had been variance in the things sold, *Quere*, if no diversity, for the issue is, *quod nullum denar. inde debet*; In *Detinue* of a chaine of 3 ounces where it is but two, wagger of Law lieth. 22 Ed. 4. (220.) *Hill.*

584. A man seised of land in Fee holden in Soccage, and of land in tail holden in Chivalry in *Capite*, he devised the 3 part of all his Lands and Tenements to his wife in recompence of Dower and died, *Quere*, if the wife shall have her 3 part of all out of the Fee simple land. But because she had entred into the 3 part of the Fee simp. land, before she brought a writ of Dower, she was barred by 27. of Dower in the Court of Wards.

585. Recovery was had to the estate of Sir *Nich. Bacon*, and because *Dedimus potesta.* to make Attorney for the tenant bare rest after the return of the originall, an error; for *per Curiam*, the judgment had relation to the return of the writ, which is before the warrant of Attorney made. *Pos.*

586. Recogniz. to Sir *Nich. Bacon*, and two others, acknowledged
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eth before Sir *Nich. Bacon*, being *L. Keeper*, adjudged that void to himself but good to the other. (221)

587. Knowledge of a Fine by *Carrell* and his wife, of the land of his wife who was but of the age of 19 years, was taken in the vacation after *Hilary* term by *Dedimus possessionem*, the writ of Covenant bare Teste in *January*, returnable *Craspin. purificat.* and the *Dedimus possessionem*, bare Teste, 3 dayes after the originall, And the Queens silver was entred in *Hilary* term 4 dayes before the death of the wife, viz. *Die veneris in septimana Pasch.* But yet the fine was not ingrossed till *diem Mercur. proxim.* upon which the heir of the woman in the term of *Pasch.* prayed that the Fine be not delivered to the party, nor recorded, and yet was notwithstanding the undue practises of the husband, because the Queens silver entred, and the Fine ingrossed another term.

588. Tenant in tail made a Feoffment to the use of himself in Fee, and after devised the same land to his wife in Fee, and died, the son is not remitted although the Father die seised, for the Devise takes away the descent, *Bishops* case.

589. *Warr. Chart.* where the land lies in two Counties, it is not well brought in one. Also the Plaintiffe counted that hee is impleaded in Assize before Judges in the other County, therefore evill also, and this writ lieth not upon speciall warranty. viz. against the warrantor, and his heirs only, except there be *Dedi & concessi*, in the deed.

590. After adimission and before induction a Prebend charged and adjudged void, for he had yet but a *jus ad rem*, and not *in re*, so of a Parson. *Dyer*. If a man plead *per factum suum datum. 11an. & deli.* 4. he ought to say *del.* 1. for otherwise *suum* imports it was an effectuall deed, 1 *lan.* (222.) If a man brings a writ of Annuity, and counts of seisin in his demean as of Fee, it shall be taken et his election to have a rent Charge.

591. The Bishop of *York* made a lease for yeers of divers lands in *Battersey*, vendring rent at *Battersey*, *Proviso* in time of vacation the rent shall be paid to the Chapter *ut in ipse suo*, the rent was behind *sede vacante*. The Bayliffe of the Successor re-entred and distrained, and avowed damage fesant. First, holden that the *Proviso* was not a Condition, but a *Forfeiture* not being annexed

annexed to the thing given ; Also if it should, yet it is an impossible Condition, for rent may not be paid to the Chapter, because they have not the reversion. Also *in jure suo* may not be, because the Queen had the right during the vacation. *Quare* also if a Chapter may receive rent because a body politic, and imperfect. And it seems the rent shall not be paid at *York*, nor at the Mansion of the Bishop at *Battersey*, but upon the land, and upon demand, *Quare*, if the state shall cease, because in the time of vacation that the Condition was broken, (if it be a Condition) so that neither predecessor nor successor may avoid it by re-entry, because the Condition is not broken in the time of the one or other, and upon payment of the rent which is not due to any of them. But cleare that it ought not if Franchement. And holden that the Baylisfe may not re-enter for his Master without expresse command' though it be not expressed who should pay the rent, yet it shall be intended the tenant, And the Defendant shewed not the distresse to be taken damage fasant after the regresse, which is male.

592. If a man be Obliged to pay money at a day and place certain, and that pay before, and at another place, by the acceptance he is discharged ; notwithstanding if he plead payment according to the Obligation the same day and place, the Jury is not bound to find for him, for the verity is contrary. (223.)

593. *Proffor* was returned outlawed by the Coroners, upon a *Certiorare per Curiam* processe of Outlawry lieth not in detinue of Charters although Iudgment of the Outlawry is given by the Coroners, because the Sheriffe returned that he appeared the 5 county, & *protulit Superfed.* and he had the custody of the Record and of the Exigent, which is the Warrant to the Sheriff to proclaim, whereas the Coroners make but a brief remembrance of that in his Book, Adjudged that the return of the Coroners is not a sufficient Record to make the party outlawed, and it was reversed without writ of error, & in another term, and a writ of restitution granted of the goods of the Defendant which were of the value of a hundred pound, and the Sheriffe returned that he had sold them for 40 li & *protulit pretium inde*, & the return adjudged insufficient, for in the writ it is not warranted

warranted *Vendic. expenere*. Yet 3 Justices doubted, for the writ is *in manus nostras cap. ut de veroualove, &c.*

A Thief took 40 shillings from the person of another in the High way, and it is no robbery without fear of death, and so had his Clergy.

A *Venire facias* return'd *quinq; Passi*, the parties appeared, but the Sheriffe returned not the writ, (224) therefore a *Venire facias* awarded returnable as at first this continuance made upon the Roll of the Plea, and yet at the said *quinq; Passi* the Defendant was *essoyned unde venire facias*, and the Plaintiffe demand' appeared not, There is entred a nonsure upon the Lessors Roll, notwithstanding the Plaintiffe proceeded with the issue and had Judgement, for the recording of the appearance confounded the *essoyn*.

594. A man levied a Fine with Proclamations and died, and 5 years incurred before his wife brought a writ of Dower, *Quare*, if she be barred, *Quare* also if it need to averr that the woman was of full age, and found memory, &c.

595. A Bastard born at Turney, when it was under the obedience of H. 3. was a Denizen as the issue born within the Realm between aliens, *per Curiam*.

596. The Attorney of the Queen took Conusance of a Fine without speciall *Dedimus potestatem*; being Justice of Assise, by force of a generall Patent with *non obstante, & bene*. Note it was in derogation of the chief Justice of the Bank, who only is preferred in that.

Trin. (225.)

597. Sir Will. Candish Treasurer of the Chamber seised of land, covenanted to be seised of that to the use of himself & his wife, and the heirs of the husband, and died, the wife took another husband, *proces computa*, issued against the second husband and the wife (because returned the landtenants *in jure uxoris*) accompt for the arrearages due to the Queen for the said Office, a *die dai litter' pass' usque mortem, &c. eo quod est return' in le Chancery, quod nulli sunt excus. nec administ.* And agreed that they shall account, because the landtenants of this land of the said Sir Will. was sole seised after an Office granted. But if the wife had been Joint-purchasor during the

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coverture and before Office, the land shall not be lyable, and that accompt is by the Prerogative against those who are not privy to the writing, *vide* now the Statute 13. *Elizabeth*.

Mich. (226.)

598. Recovery against the heir by *nihil dicit* in debt, he brought a writ of Error for fault of Warrant of Attorney *per* himself, the writ was not delivered to the Clerk of the Treasury till six dayes after the return, for that the Plaintiffe was now suffered to put in a Warrant of Attorney for the default, which was commanded to be entred. Note after a writ of Error brought.

Mich. Sexto Elizabetha.

599 Divers adjournments of the term, *viz.* of the intire term, of two returns, &c. (226.) and holden that the Queen may by her Prerogative make a Sheriffe, without the usuall assembly and election in the Exchequer, *quod accidit hoc Anno.*

600. Assises adjourned in the Bank, were without day by the not coming of the Justices, notwithstanding the adjournment of the term, though they are not discontinued *per* reas. of the Stat. 1 Ed 6. And after upon an Reattachment against the Defendant and Resummons or *Habeas Corp'* against the Recognizors returnable the next Assise.

601. *Ejectione Firme* against two, the one appeared and pleaded the generall issue, procelle continued against the other, who now appeared, and pleaded entry after the last continuance, in abatement of the writ, upon which the Plaintiffe demur^r. After the issue *supra* was found for the Plain:isse, he shall not have Judgement; for the Demur^r confesses the entry, which abate his own writ, for in this action the term is to be recovered. *Contra*, if he had been imparled. (227.)

602. Where adjournment of the term was to *Hereford* 20. *Jan.* because between this day and some of the 3 Returns there are not 18 dayes, the originall for Fines and Recoveries were made returnable *Ostab. Hill.* at *Westmin.* and notwithstanding the finall accord was made at *Hereford*.

603. A *Scire facias* to have execution of Damage, recovered in an Assise, the Defendant said that the Plaintiffe entred after verdict,

verdict, and before Judgement, and no plea, but if he had said and seised it amounts to a non-tenure.

604. Sir *Gl. Capell* granted an Annu' to *B.* for life out of land, & *si contingat arretro fore, liceat distring.* for the Annuity *6 s. 8 d.* in nomine *pæna*, *B.* died, his Executors brought a debt of the arrerages and penalty against the Executor of Sir *George*: who pleaded, no such land out of which, &c. The Plaintiffe demur' the count was, *virtute cuius* Grantee was seised in his demeanor of a Freetenement, whereas it was but an Annuity. Also the person is not charged with the words *supra sub nomine pæna*: Besides there are no words of Grant of that, but onely *si conting'* &c. *Quere* although the person be not charged: For if a Rent-Charge be granted for life, *Proviso, non onera bit personam*, if the Grantee die, he lies against the Executors for arrerages: also it appears that the son of Sir *George* was named in the Deed as Grantor, but because he sealed not it needs not that the Executor should make mention of him, *Quere*.

605. Generall pardon discharged all *post Fines* under *6. li.* Two Originalls of Covenant, but onely one Concord was of lands in two Counties, and the *Post Fine* exacted intirely, exceeded 6 pound, whereas if it be divided it is under, which although *Sackford* requested, yet the Concord being intire, the *Post Fine* shall be but one. (228.)

606. Debt upon the statute 24. H. 8. of apparell, *tam pro Domina Reg' quam pro se ipso*, the Defend' pleaded outlawry in the Plaintiffe, who replied no such Record, and day given to bring in the Record, (But because in the same Court it is so that the Justice may in the mean time see the Record in the usuall form) before the day, the recovery was removed by writ of Errour; and now at the day he brought an exemplification without writ and without other Seal then of the Kings Bench; And it seemed to some a Failer; So it should have been by relation if the Record had been reversed, although there was such Record at the time of the Plea; But then it seems it is not peremptory but that he may plead over, *Quere*.

607. *Assien* in accomplishments of covenants of Mariage of his

this son with *A.* made a Feoffm. to the use of *A.* for life, the marriage succeeded, the Father died, Office found that the son was seised in Fee of the land *supra*: and of other lands holden of the King in Chivalry as of the Duchy of Lancast', his heir within age, the wife sued a Petition of Dower to have other lands, *per curiam*, the conveyance *supra*, is so within 27. although not father of the Baron at the time. But if the said Feoffment had not been found by Office, also not being expressed in the Indentures to be for Jointure, it may be averred for the Queen, and also to be for Jointure, *Quare*, and if the wife shall be received by Commission in the Court of Wards, to averre it is not for Jointure.

608. *Quare impedit* per Sir H. Sidney, the Church void by making the incumbent Bishop, *per tous les Justices del common Bank*, the Queen shall have the presentment by her Prerogative. And there that the issue for avoidance shall be tryed by the Country; for the avoidance is open to the country, and the resignation which is spiritual is but an evidence.

Pass. (229.)

609. The wife dited before livery sued, the husband shall be tenant by the courtesy, and he shall sue livery. (229.)

610. *Chibbornes* case, Lands in London may be bargained and sold by paroll without Indenture, or inrollment, as before the 27. by proviso in the statute.

611. An Obligation to ratifie, confirm and allow all times the estate of the Obligee, it is no Plea he had not ratified, confirmed, &c. for the confirmation ought to be pleaded by deed.

Trin. (230.)

612. A man having a Charter which concern' 4 acres of Socage land, he devised 3 to his youngest son, and the 4. to his wife for life, the remaind' to a stranger and died, the wife entered in the acre and hapned upon the Charter, and brought a Dower of 3 acres, against the youngest son, who pleaded detinue of Charters in Bar, and that if shee would deliver, he was ready to render Dower, but in conclusion he said yet ready to render, inaslesant the condit' if &c. which is a confession, and adjudged

Judged for the complainant, and none shall have the plea but the heir of the husband, and in by descent, and not by purchase, and he ought to be landtenant and not Vouchee: Tenant by Receipt, nor yet prie in aid, for then he may not plead all times ready *si &c.* Also Gardian in Chivalry shall not have the plea, because he may not maintain detinue of Charters, and the plea is not good for more lands then the Charters concern: The certainty of the Charters ought to be shewed if they be not in a Box. Also he which shall have the plea ought to shew that he is heir, or herwise it shall be intended he is not.

613. Judgement of Treason for clipping money, is to be drawn and hanged onely.

614. *Alford's* case A Servant made a Bill testifying buying wax to the use of his Master, and that was without seal, in which he obliged himself to pay the debt; Debt lieth not against the Servant but an action upon the case, for it is the debt of the Master and the Assumpsit of the servant.

615. *Seignior* in Chivalry, released and confirmed to the Tenant to hold *per essem*: the new reservation void upon estate before created, and hete the tenure of Fealty abides

616. In debt because no warrant of Attorney entred the Judgment reversed, and this although the writ of Error brought the same Term, the record remaining in the breasts of the Justices, and the Plaintiffe had praid entry of that, Note the first action and the writ of error brought in the Kings bench.

Mich. Septimo Elizabethæ.

617. A grant of the next avoidance between the statute of Monasteries of 31 H. 8. and the surrender of the Abbey seems void; for the saving in the act, shall not be understood of future titles, *tamen dubitatur*; if a lease be made *ut supra* rendring the ancient rent. (222.)

618. The Defendant challeng. for the hundred he ought to shew in what place the hundred is, and shall not drive the Plaintiffe to shew it.

619. Sir Edw. Walgrave upon forfeiture of a 100 marks for hearing private Masse it was estreated into the Exchequer, he

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died

died before the 6 month past, *Quare*, if the Executors shall be charged with the 100 markes, because he himself was at election to pay or to be imprisoned *per* 6 months, which is now discharged by the act of God.

620. If debt be brought against the Ordinary for the debt of the intestate, after notice he may not administer to others if he had not sufficient to satisfy that debt.

621. When fine and ranfome is imposed, ranfome is treble, the fine is the lesse.

622. Leases by the Chancellour of the Duchy without the usuall *Proviso* viz. *si quis plus dare vol* are void by the ordinance of the said Court, 20 *H. 6.* yet wherethere is in such Lease those words *quod Dominus Rex*, with the assent of the Counsel without words *supra*, (although falsly) the Lease is good, because Leases made by the Counsell of the Duchy are excepted out of the Ordinances. Leases under the seal of the Duchy Chamber of lands within the county *Palatine* of *Lancaster*, newly annexed by the intendment of the statute 37 *H. 8. cap. 7.* which will, that such as passe under the County Seale are void: And in the time *H. 8.* it was holden, where an Office of the same Court was granted by the King under the great Seal, it was void; Yet the words of 27 *H. 8.* of erection of the said Court are in the affirmative. And Leases of Possessions within the survey of the said Court shall be by seal of the said Court. *Quare*, of the Chancery land within the Duchy, (because of the *Proviso* of 1 *Ed. 6.* which shall be in the survey of the Duchy Court, as other land shal be in the order of the Augmentation) If the Counsel of the Duchy may grant the Reversion or make a Lease above 21. years, for the Augmentation by the Letters Patents of the erection were restrained.

623. *Harrison* at full age brought an *Audita querela* in the Chancery to avoid a Recognizance, in nature of a statute *Staple* made by him within age; But because his age shall be tryed by the inspection of the Court, which now may not be, it lyeth not, so also if he dye within age.

(233.)

624. A Prior made a Lease for life of the demean of a Mannor, rendring rent, the King after dissolution made a Lease for yeers of the Mannor; And adjudged that by name of the Mannor, the rent and reversion of the demceans shall passe.

625. A Prior and covent may not make livery, *per* the view.

626. A dispensation *per* Archb. Cant. is sufficient for one who is created a Bishop, to hold a Benefice in Commendam, although the dispensation is not inrolled according to 25 H. 8. in any Court but onely in the Register Archbishop.

627. An Ordinance of the Colledge of Windsor was, that if the Dean be to be absent, that he shall chuse one of the Commons to be his Leivtenant, *q. suum in omnib' exerc' & gerat' offic' in person' & Colleg' memorat'*, such Deputy with the Chapter made a Lease, and it seems without authority. For Colledge is to be intended but the scite of the Colledge, and sometimes but the circuit of the house. 29. Ass. Rent granted *percipiend. de Abbash.* the scite shall be onely put in the view.

628. The Steward of a Leete which was holden *per* prescription once in the yeer when it pleased the Lord, (*Quare*, if a good prescription out of the *Mense Pasche & Mich.*) assesse a Fine by one for assault onely in his presence, *Quare*, clearly the indictment found there. So in the Turne of the Sheriffe on Assault and Battery is not good there without blood spilt.

(234.)

629. Bonner by Addition of Doctor & *in sacris ordinibus constitut'* was certified *per* Bishop win' Recusant of the Oath of the supremacy upon the 1. *Eliza.* And the certificate challenged because there is not addition of Clark nor Bishop, But *non allocat.* The entry of the certificate was that it was brought by A. Cancell' of the Bishop without speaking of his commandments, yet challenged for that *non allocat'* because the recording of that is not of necessity: The Indictment was in *Middlesex* according 5 *Eliz.* in that county where the Kings Bench; the

Defendant pleaded not culpable. And because the 5. of *Eliza.* warrants not the tryall there, the Inquest was of *Surrey* where the proffer of the Oath was; And *per curiam* upon that issue it is a good evidence that he which certified was not Bishop of the time of the offering of the Oath, and the Jury may take notice of that.

630. In a *Formed' in defend'*, a Fine with Proclamation 30 *H.8.* was pleaded in Bar, and issue upon no such Record: at the day the tenant had the Record, but in the Proclamation 5, 6, 7, 8. made in *Trinity* term, the year of the King is not put; But because in *Pasch.* before, and *Michael.* after, was put the 30 *H.8.* of necessity it ensued that the said 4 procl' were in the said year; for that holden, that he had not failed of the Record.

631. The wife of *Nichol. Po.* without the Assent of the husband shee bought Velvets and Silks of one *W.* for her apparrell, But the husband payed the Taylor for making; And in debt, brought by the Executors *W.* against Sir *Nicholas* upon issue of *non detinet*, 'all the matter *supra* in evidence, the defend' demur'. But the Jury charged, for that the Plaintiffe nonsuit; *D.* doubted if the issue shall be found for the Plain:iffe.

633. *Nudigates* case, Lessee for life, and he in reversion made a Lease for yeers by indenture, this is the confirmation of the reversion now. But if the tenant for life die, he shall have a waist *ex demis. prop. 2 contra 2.* (235.)

634. Petty treason is discharged *per general pardon* as to the Queen, but murther excepted; one who had killed his Master was indicted of Murther only without *proditor* and found culpable and reprie for the difficulty.

635. The Lady *Manners* case, before 27. a man covenanted in the consideration of the marriage of his daughter, that hee would recein land for life, and after his death, that his daughter and her husband, shall have it in tail, and that he and all others, then, or after seised shall be seised to the said use, & over that he would make assurance to the said use, the marri. is had, after he bargained & sold the land for 300 *L.* (But nothing paid) to one who had notice of the use, and upon that levied a Fine and suffered

ferred a recovery, but retained the land during his life, and died; The Bargaine to one who had notice changerh not the use, which was well raised by the Covenant; for that the son and his wife entred and made a Feoffment, and adjudged good.

636. Land in *Capite* given to the Grandfather for life, the remainder to the father in tail, the remainder to the right heirs of the Grandfather, the father he died, the Grandfather and son levied a Fine as that, &c. in which it was rendred to the Grandfather for life, the remaind' to the son, and his wife in tail, the remainder to the right heirs of the Grandfather, the Grandfather surrend' and released to the son and his wife, and to the right heirs of the son and died the son at full age, the opinion of the Court he shall sue livery.

637. Attaint upon the stat. 23 H. 8. for false verdict in Assise given against the Plaintiff, where issue was no wrong, &c. by the Grand inquest the Disseisin found and damages and costs assent after the Assise brought, and the Judgement was to recover the seisin, &c. but not *per visum iurati* and the penalty of the statute.

(236.)

638. If a stat. makes a thing an offence which was not at the common Law, and inflict pain for that to be recovered in any of the Courts of Record, that offence is not to have penalty, nor determines before Commission of Oyer, &c. nor out of the 4 usuall Courts at *Westminster*, but if so Court limited the King shall have the Prerogative in any Court.

Hill.

639. In an action upon the case for calling the Plaintiff Murderer and Theof, the Defendant justified Murder, because he was indicted of Murder at *Chester*, holden that it is not a good justification, but the Plaintiff passed that, and said that he was acquitted of that by the Jury, and shewed the exemplification under the great Seal of the County Palatine, to which the Defendant said no such Record, *Quare*, if he may against such exemplification: And for theef the Defendant justified, because there was a Robbery done, and the common fame was that the Plaintiff &c. and holden no Justification here but good in false imprisonment.

M 4

640

640. Executors refused, the Ordinary committed the Administration, the Administrators brought an action of debt, and the writ supposed dying intestate; *Quere* if the Defendant may traverse that and say he made a testament, &c.

641. The Qu. shall recover damages in *Quare impedit per st. West. 2. c. 5. 34 H. 6. wangf. contra*, and that in a worse case than a common person, *Fitzh. Quare impedit. 181. Dam. 17. accord.*

Pas. 642. Benefice for the first fruits valued at 6. l. by the year, where it was worth 8. yet it shall be void upon *stat. 21 H. 8.* for taking another, *Quere* if there need notice to the Patron, but void upon *stat. 26 H. 8.* for refusal to pay tithes because the words are, that it shall be void to all intents, as by death, the Ordin. need not to give notice.

643. *Mackwill* had land holden of the King in Chivalry, to him and his wife, and to the heirs of the husband of the body of his wife; the remainder to the right heirs of the husband; and he had other lands holden in soccage in capite, and infeoffed divers persons to the use of himself for life, the remainder to the youngest son in tail, the remainder to his own right heirs and died, & his eldest son for the body was in ward, *per stat. 32.* where two have an estate and to the heirs of one of them, after the son came to full age, and then the wife died, he shall not sue ouster remain of the Chivalry land, because it was never in the hands of the Qu. but was a bare remain, during the life of the feme; and for the soccage he is not bound to use livery because the youngest son is in life and had issue.

644. The husband seised of land in fee, a fine is levied of that to him and his wife, and to the heirs of the husband, and they rendred for the life of the husband, the remainder to a stranger for life; the remainder to the right heirs of the husband; the husband died, & the tenant for life died; it seems the wife shall have the land for life, for the render to his own right heirs by the husband is no remainder, but the ancient reversion, for it is a void limitation *per* him and to his own right heirs; notwithstanding judgment was given with the heir as a Purchaser, but it was compounded, but such a fine refused 13 E. 3. *Bromlys case.*

645. In

645. In an action upon the second branch of 1 & 2 of P. & Mary of impounding intire distresse in severall pounds, the place where the distresse was taken is not materiall, no more then in a Trespasse of goods taken, 2 Just. *contr.* but upon the first branch the place is materiall, because distance of the place causeth the offence.

(238.)

646. The Lo. Shandoes brought a Trespasse upon the stat. west. 1. c. 26. de Malef. in parcis, &c. but upon issue found for him the Court advised for the entry of the judgm. because the action was not also brought in the Queens name according to the presidents; also there is no double recitall according to the words of the stat. of finding surety: The bond that by the stat. shall be taken of the Defend' *quod non ampl' malefa.* extendeth also to all other parks; and it seems the Bond shall be by Recognizance to the King and not to the party.

647. The Coroners inquest indicted a man of murder, & *quod fugam fecit*, and upon his arraignment he is acquitted, and another found guilty *ut oportet*, and also found that he did not fly, yet he shall forfeit his goods, for upon his arraignment in this place the flying shall not be given in charge, for they were forfeit by the Indictment.

648. The Defendant in intrusion in the Exchequer ought to make title, for that he pleaded *que estate* of a term; The Queens Atturney traversed the original Lease, which was found against the Queen, he may not now take advantage of the insufficiency of the plea. (239.)

649. A Customer in the Creek according 1 Eliz. made a Deputy, the deputy concealed the custome, the customer himself upon his oath certified the custome according to the misinformation of the Deputy; adjudged that the customer himself shall be charged with the treble value upon stat. 3 H. 6. c. 3. for false concealment.

Trin.

650. In a debt against three heirs in Gavelkind, upon the obligation of their ancestor, the one being within age, they were outlawed, the two of full age purchased a charter; and upon a *Scire facias* the Plaintiff counted against them all together, &c. the plea shall not abide for the nonage of the third, because by the outlawry the originall is determined against him, and it is not void because an infant, but voidable by Error.

651. The Provost of *Wells* Parson imparsonce of the Parsonage of *Winsam*, hee let the tithe for 50 yeers rendring rent, which was confirmed by the Dean and Chapter, but not by the Patron and Ordinary; the Provostship was by Parliament united to the Deanry, *cum primo vacare coming*. the Provost died, the Dean accepted the rent, and adjudged that the Lease is not affirmed, for the Lease of the Provost is void by his death; as it is of a Parson and Prebend; *contra* of a Bishop, Dean, Abb', &c. who are elective and may make a discontinuance. But if the Lease *supra* had been for life, it should not have been void without entry. Also the acceptance *supra* is not to the purpose, for the reversion is determined, and the name of the Successor altered, as if Tenant in dower, or other particular tenant made a Lease and died, and he in reversion or remainder accepts, (240.) that shall not affirm it, for the reversion is altered; and holden that the Jurors may take notice of the speciall act without an except' under the great seal given in evidence of that.

652. The wife had 3 part of the land of a Termor delivered to her by the Sheriffe in Dower, the Termor gave, granted and assigned all the land comprised in his Lease to A. and covenant that hee had not done any act, but that the assignee may enjoy it against every act, and was obliged to perform the covenant, the obligation is not forfeit; for the words (*mes que*) they have relation to the words that the Lessee had not done any act; and are not absolute words.

653. To build a new house in his wast or severall within a forreist is purpresture and nufance to the game; and finable at the

the discretion of the Justices of the Forreſt, for ſuffering to ſtand where it is to be raſed at their pleaſure.

(241.)

654. The Leſſee of a Parſon brought an *ejectione firme*, the Defendant pleaded that the Parſon was deprived; the Plaintiffe ſaid that the Parſon had appealed to the Biſhop of *Cant. in Curia prerog. ſuade arcub.* and becauſe the words of the ſt. 24 H. 8. cap. 12. are, that an appeal ſhall bee to the Archbiſhop of the Province, where &c. without limiting any court in certain, the Plaintiffe demur' and holden *per Juſt.* that to the Archbiſhop *Canterbury* are words ſufficient and the reſt but ſurpluſage, and ſhall not prejudice. Alſo it appears that the Arches is not the Prerogative court: but becauſe the Def. ſhewed not but demur' generally, the temporall Judges may not take notice of their jurisdiction.

655. It is not a good returne for the Sheriffe, *quod mandant balivo itinerant'* who answered that the arreſt and Reſcous is made, for it is the arreſt of the Sheriffe himſelf: And if it be upon a *Capias ad ſatisfac'* or a *Capias utlag'* after Judgment, the Sheriffe himſelf ſhall be charged with the eſcape, except it be by the Kings enemies; and he ſhall have his remedy over againſt he which made reſcous, by his action upon the caſe; but if it had been a Bailie of a Franchiſe the return had been good, and *Non omittas* ſhall iſſue.

656. A *Quare impedit* againſt the Archbiſhop of *Cant.* the Biſhop of *Linc.* and the Incumbent, they made default at the Grand diſtreſſes; upon that the Plaintiffe made title, and had a writ to the Biſhop, and the writ was awarded to enquire of the damages, of the plenarty, and at whole preſentation, and how long time ſince the vacation, and of what value the Church is *per annum*, all which points are returned by inquiſition, and accordingly judgement given that the Plaintiffe ſhall recover the preſentation, and had a writ to the Biſhop of *Linc.* and damages to the value of the church for half a yeer, and the Defend' *in miſericord.*

657. Cobham indicted of Pyracy stood mute, for he answered not directly, and had judgment of *pain, fort, and dure*, by Stat. 28 H. 8. c. 12. and after had his Clergy after he demanded it per Stat. 1. E. 6. c. 12.

Mich. Octavo Elizabethæ.

(242.)

658. A *Capias ad satisfac' return' tres Trin.* is not served, the Factor of the Plaintiff took it from the Sheriffe, and one of the pronot. clerks made *tres Trin. tres Mich.* and now the Factor delivered it to the Sheriffe unsealed, *viz.* to the Sheriffe of London, who made a warrant to the Serjeant, who arrested the Defend', and after the writ was sealed; the offenders for the practice were committed to the Fleet, but the writ was received, after it appeared upon examination that the Plaintiff was ignorant of the practice, and the Defendant was committed to the Fleet in execution. The practice *supra* appeared, because the writ was *sub testatam*, and then it is entred upon the award of that, which was not amend'.

659. Two submitted to arbitrament by Recogn. for the right and interest in 200 acres of land called *Kelstorn*; and for all other actions and sutes concerning the same, *Ita quod arbitrium eor.* before a certain day: The Arbitrators awarded that the Defendant shall have brakes during his life in the wast of the Town of *Kelstorn*, rendring to the other 2. s. *per annum*, and upon demurrer adjudged a void award for 3 causes. 1. Because the Arbitrators had disabled themselves, their authority being upon condition, *viz.* *Ita quod*; inso much they had made award but of one thing; where the submission was of two; but if the submission had been *per parol* the award had been good for part. 3. Also they had not awarded the property of the land of which the submission was, but one profit out of the land. 3. They had not named *Kelstorn*, and although they that intended, yet the averrement of the parties may not declare the intent of the Arbitrators.

(243.)

660. Perjury in suggestion to obtain a prohibition is not punishable in the Star-chamber, *vide* Stat. 3 H.7.c.1.11 H.7.c.25. & 5 Eliz.c.9. for the authority to punish perjury in the Star-chamber.

661. Three Coparceners, one aliened her part, the other brought a writ of partition against the Alienee, and the three coparc. upon the Stat. and *per Curiam* it shall abate, because in this case a writ of partition lies at the common law. But yet if they join against the Alienee, and one of them had been non-sure, she shall be summoned and severed, and yet her part shall be allotted; If the husband of one of the coparceners, or one of the coparceners themselves had purchased part of the other coparceners, they shall have a speciall writ at the common law against the third.

662. Submission unto award by obligation, so that it be made and yeelded in writing at or before *Michael. &c.* the Plaintiffe said that the Arbitrators by arbitrimēt in *Script. fact.* and made the delivery of it to the parties before the day, &c. and assigned breach; Defendant demur's; *Curia* against the Plaintiffe.

1. It is not direct, but only an argument that the Arbitrators delivered the award.

2. Also he ought to have pleaded the delivery according to the condit' *viz.* that it was delivered at or before *Michael. &c.* and not before only.

3. Also *reddat*. had been more apt a word to answer to yeeld then *deliberat*.

(244.)

663. A Bill of debt against an Atturney of the Common Bank by name of husbandman, upon which he was condemned and brought a writ of Error, and after *per Capias ad satisfac.* sealed with the seal of the Bank of the K. (where it issued out of the common Bank) he was taken, but upon suggestion of those matters he was brought into the Bank upon *Hab. corp.* awarded in

in London, and upon examin. apparant *ut supra*, was discharged, and the Atturney of the Plaintiffe committed.

664. Four Defendants in Assise, where the plaint was of 3 houses; and 3 Defend^r took the tenancy severally of a house, and pleaded severall Bars, and to the residue no wrongs, the fourth took the intire tenancy of all without that, &c. and pleaded also Bar at large, the Plaintiffe is at his perill to chuse his tenant.

665. Ed. 6. granted to a Bishop and his Successors an Advowson, and that he shall hold to his proper use, after the death of the Incumbent, the Bishop by Indenture made a Lease, to begin after the death of the Incumbent, which is confirmed and died, the Incumbent died, *per touts* Just. it is a void Lease against the successor, for he had nothing to let during the life of the Incumbent, who survived him.

666. The Factor of the Plaintiffe and the Sheriffe conspired to arrest one condemned in debt, and after procured a *Capias ad satisfac* and the prisoner brought into the court upon the return of the writ he had the matter examined, and found *ut supra*: notwithstanding, because the Pl. was not party to the crime, he remained in execution, and the Sheriffe and Factor amerced, the Sheriffe to 10*l.* the Factor to 5*l.* (245.)

667. If a writ of Error bee delivered to the chief Justice or to the clerk of the Treasury, that is a perclose, to the awarding execution, but if the Plaintiffe pursue not to have the record removed before the writ of Error returnable, the Justices after may award execution; but otherwise it is of a *Cerciorare* to the Justices of Peace, to remove an indictment, which had words *de non vult sel' illam terminari alibi qu. coram se.*

668. Upon st. 35 H. 8. c. 6. one of the principall pannell may be joined to the 11 of the *Tales de circumst.* or one upon *Tales* joined with 11 principall, and yet the words of the st. are plural, viz. proceed with those added, and if two of the principall appeare, & *Tales de 12 circumstantibus* be granted, if the two be drawne out, the tryall may be all *per Tales*, *per Brown.* But *Quare* is upon the said stat.

669. *Varney* 34 H.6. in execution in the Fleet for divers debts, as also for fines for the King returned in the Exchequer, caused himself to be indicted of felony, to the intent to confesse that, and to have his clergy, and so to be out of the temporal law, and after to make purgation, and this to defraud his creditors, and upon a *Corpus cum causa* all was removed into the K. Bench; the King understanding that, per privy seal commanded the Justices to stay the arraignment. After one of the creditors acknowledged satisfaction in Kings bench, of a debt recovered in the Exchequer, and note the judgment was *quod esset inde sine die* for *esset inde quietus*.

670. A *Plur. Repleg.* out of the Chancery returnable in the Bank, the Sheriffe of London returned that they ought to make *Repl.* by custome upon plaint, in the Sher. court, and not by writ out of the Chancer. & by all the Just' the return is insufficient, and another *Plur. Repleg.* award' to the Sher. now, and process of contempt to attach the late Sheriffe, *vide stat. Marl. c. 21.* and it seems at the common law the Sheriffe may not make a *Repleg.* without writ; *Quare* if upon *Plur' Repleg'* the Defend' had day in the court to plead. (246.)

671. After the Teste of a writ of Covenant, and *Dedim' potest.* and Conuſance of a fine taken of a feme sole, and before day in the Bank, to record and ingrosse the record, the wife took husband, yet it shall be now recorded as the fine of the feme sole, for she had done all which was in her to doe, and it shall bind the wife and her heirs, and also the husband as it seems, for the marriage of the feme is her own action, but if she had died the writ of Covenant had abated being the act of God, then otherwise had it been.

672. Tenant in tail made a Lease for 20 years to begin at Mich. *Quare* if good within 32.

Hill.

673. *Repl. g.* against a Bishop and others, they were 32 several issues, but one *Venire facias* awarded, the Bishop challeng' the array because no Knight, and it is a good challenge for all, because the *Venire facias* was intire, although the issues several.

674. Af

674. Assise of land in *Middlesex*, the Defendant pleaded a Lease for yeers to him made by one *F.* per name of a messuage in *Surrey*, and of all lands lately with that demised, and averred that to be the land in plaint, and in without wrong; the Plaintiff demur'.

1. Because no colour is given to the Plaintiffe by *F.* *Quere* if it needs because the plea is no Bar to the assise, for not being tenant of the franktenement, he shall say *assisa non*.

2. Also the house and land are in severall counties, therefore the *per nomen* is not well pleaded; (247.) But by the Justices upon the Lease for yeers *supra*, the land in both counties shall passe, but otherwise of an estate for life, for there shall be several liveries. It had been a better form to have pleaded, that *F.* was seised as well of the lands in view, as of the house, and demised, &c. *per nomen*, &c.

675. The Ordinary after administration committed was sued in debt by plaint in *London*, and being returned *Nihil habet*, upon suggestion the debt was attached in the hands of one *W.* who was indebted to the Testator, and after 4 defaults of the Ordinary, being returned *non est inventus*, and oath that the debt is due, the Plaintiffe had judgment and execution against the said *W.* against whom now the Administrator brought an action of debt, who pleaded the matter *supra*, the Plaintiffe demur, and adjudged he shall recover, for after the Administrator committed, an action of debt lieth not against the Ordinary, nor yet for him, and it lies not at all till *West. 2. cap. 19.* which is within memory, and may not make a custome. *Tost's* case.

676. If by the private statute of a Colledge, speciall persons of a corporat. may dispense with the absense of a Fellow, the greater part of the said speciall persons dispensed, &c. it is not good upon the stat. 33 *H. 8. c. 17.* which is that Grants, Leases, and Elections of the greater part of the body, which is of the intire body; and not the greater part of the part of the Corporation, &c. *ut supra*.

677. In a Writ of Right, the wife joyned upon the Grand Assise, the Iury and foure choosers appeared *ipso die Essoin.* and oath given to them being sixteen in number *precise dicere verit' &c.* & because the wife is joyned and prayed by the Tenant first, he shall first give his evidence.

678. Land was given to the Grandfather, and the heires of the body of the Grandfather, who was dead, the son brought a Formedon in discender, he ought to make him cousin and heire to the Grandfather: for otherwise it was intended that the gift was made to the youngest son and besayell. *Alui*, it shall not be intended without shewing of the Tenant.

248.

679. A Termor granted over his estate, rent incurred, debt lies not against the first Lessee, for the privity is dissolved and gone with the Land, *Quere* being but a personall Contract 44 Assise *Chall.* 49. very Tenant remained Tenant to the Avower till the Alienee atturn Tenant to the Lord.

680. *Per Catlyn, Sanders & Dyer*, a state limited in Fee simple, by the husband to the wife, may be averred to be for jointure for Bar of Dower within 27. H. 8. *Brown and Whiddon Contra B. Dower* 69. that the opinion of the Iustices 6. Ed. 6. was, that it may not, so of a devise which is but a benevolence: But holdon that an estate in Fee is not within the Statute of 11. H. 7. the case of the wife of Sir *Maur. Dennis*.

681. A Steward or Bailiffe may be retained without deed, and shall have a debt for wages if he exercise the office; but he shall not have a writ of annuity without deed.

682. *Quere* if but an action of the case lies for he which had Freehold in a Mill for diverting *multam aquam*, or he shall have an Assise.

N

249. *Pasi*

677. In

683. Upon a Commission in nature of a *Diem clausit extremum* tenure of the Queen, as of the Barony of S. in soccage was returned. After a second Commission found Chivalry tenure, as of the said Barony. After that a third Commission issued; reciting *quod compertum est per inquisit' capt' post mort' A. tempore H. 5.* that said Land was holden of the King in Chivalry, in *capite*, upon which Chivalry in *capite* is now returned *prout per dictam inquisit' de tempore H. 5. liquet.*

684. It was holden that the heire needs not to traverse the two last inquisitions, for they were without warrant, but that the first office although against the Queen, shall be allowed, till disproved by *Scire facias*, which shall issue out of the said Record of H. 5. according to the Statute of Escheators, 29. Ed. 1. *Bassets* case.

685. *Brevetons* case, A Mannor holden in *Capite*, being in lease for yeares and rents reserved, descended to the heire, he entered and took the rents. The generall pardon of the 5. of *Eliz.* came and discharged all intrusions and entries; and holden that by consequence the mean issues and liveries to be sued, are discharged; and the exception of those who had rend' and ought to sue liveries out of the hands of the Queen, shall be intended in the Copulative and not in the Disjunctive, and holden that actions of accompt, and of debt excepted, neither excepting homages, reliefs, rents, and services, are to the purpose for those mean Rents here, for at the time of the Act she was not intitled to any action or rent by the Law for those.

686. *Harrison* in execution for Debt in the Counter, because the Fleet is an easier Prison, caused himself to be sued in the Common Bank upon an obligation of 20 l. and confessed the action, and caused one in the name of the supposed Obligee (being brought into the Bank

Bank by *Corpus cum causa*) to pray that he might be committed to the Fleet in execution which was done for both executions. Now the matter was revealed, but the Obligee knowing nothing of the matter was discharged, and the Prisoner was resent to the Sheriffes of London, and a fine of 10 pound assessed upon him for the fraud, *vide Stat. 1 Rich. 2. cap. 12.* and how Prisoners shall be kept strictly: and 24 H. 8. in Star Chamber, the Keepers of London were enjoined upon pain of a 100 pound that no person should go at liberty within nor out of Prison with a Keeper.

250.

687. Error was brought in the Common Bank upon judgement given before the Iustices of Assise for the County of *Monmouth*, the Defend'd demur' upon the Iurisdiction' to hold plea of Error, upon judgement in Assise before the Iustices *per* Letters Patents of the King, by all the Iustices of the said Bank it lies not; *vide Britton cap. 1.* And there are divers cases vouched of the Iurisdiction of the Common Bank to hold plea of Error or attainments upon false oath, in other Courts, and to write to other Courts to have the record certified to try a thing depending before them.

688. Tenant for life of a house brought an action upon the case against one who stopped a way in his Land, which from beyond time, memory, &c. had been a passage between the house and a Park, and although the Park was to the Lessor, and not to the Tenant for life, It was holden by the Court that that action lieth not, but an assise of Nufance.

251.

689. The Custome of a Mannour was, that the Lord and Surveyor, or his deputy, might demise by Copy. The Lord granted authority to two to make customary estates for payment of their debts, and died. They held Court in their own names, and granted Co-

N 2

pies

pies in reversion according to the custome. The wife of the Lord had one of the Copyholds assigned by the Sheriffe upon recovery of the third part of the Mannour in Dower; and holden that she shall avoid the Grant by the two Assigns.

690. Lessee for yeares rendering rent, the reversion is granted, for life remainder over in Fee, the Grantee released all his right to him in remainder, he in remainder granted the reversion in Fee, the Tenant for life also released to this Grantee *ut supra*, and holden that the releases are void because there are not words of Surrender, yet *Quere* if the second release shall not inure as an Attornment to make the remainder passe.

691. *Saxwell* covenanted to assure all his Copyhold Lands to *A.* after he Surrendered to the Steward out of the Court, according to the custome, of divers parcells *per* particular name, but concluded generally by name of all his Copyhold Lands there: *D.* that no more passeth, but that which was named in the Surrender.

252.

692. Tenant for life is content and agreed by words, that he in reversion shall have his interest, rendering 20 shillings by the year, and that without deed or livery, it is no surrender *per curiam*.

693. If a Formedon be returned *tard e*, and the Demandant sue an *alias Summons*, there shall be 9 returns between the *teste* and return of that, and upon the *last de supra return* the Tenant may not be effaigned, for he had no day in Court. Note in the *alias Summons* shall be words *si demand' fecer' te secur.* except there are sureties found in the Bank.

Trin.

694. The incumbent of a Frank Chappell or Chantry donative made a Lease for 99 years, *A.* being Patron of the Donation appendant to a Mannour of *A.*

was

was seised in tail, confirmed it; the Stat. 1 Ed. 6. of dissolutions is made, the Patron and Incumbent died, It seems the King may avoid the Lease as the successor might. But because the Patron had discontinued the ancient tail, which he had at the time of the Confirmation, and took a new one 35 H. 8. the Lessee for the King, shall not have judgement.

253.

695. The Queen granted to Sir William Cordall the custody of the heire of one Kniveton & omnium terrarum, to him descending or appertaining, as sonne and heire of the said K. If the said K. happen to die, his son and heire being within age. After Kniveton conveyed his land to the use of himself for life, and after his decease to the use of his wife in tail, the remainder to the right heires of him and his wife. After Kniveton and his wife made a Lease for 40 yeares, and suffered a common recovery for the assurance of the Lease. The husband having issue a son within age died, after the wife died: if the Grant in the life of the father be good, yet the Grantee shall have any land in Gard, for he had nothing in descent as heire of his father, but the body and the marriage he shall have which is vested immediately after the death of the father, and th's by Stat. 32. H 8. because the disposition for preferment of the wife, But he may not have the the third part of the Lands by the words of the Grant, for he had the tail, and the Fee simple expectant also now by descent from the wife, and by the Court the heire may avoid the Lease, for the wife had nothing in the Frank tenet at time of the recovery. There by Kellaway, that childrens children, *per opinio' Curi'* have been intended of strange blood to the dispos' and are not within Stat. 32 of Wills.

696. Swinton granted Rent to F. by *Fine habenda sibi & assignat' durante vita Cassandre* wife of the Grantor,

Grantor, and that if it be behind *quod bene licet F. & hered' durante vita Cassandra distring' F.* demised the rent and died, if the Grantor shall return it as occupant, or the Devisee shall have it, *Dier.* that the Devisee shall have it for the clause of Distresse made, and that the Grantee had Fee determinable, upon the death of *Cassand' vide Quintons case 26 Assise, and Collingbrooks case 8. H. 4. accord.*

697. A Termor without impeachment of waste, covenanted after selling, to inclose, and in debt upon the obligation for performing of covenants, pleaded that he had not felled, the Plaintiffe said he had felled two acres, and that he had not made defense, the Defendant that he had made defense, & *de hoc, &c. tenuis a departure and scotail, and the lury discharged.*

698. A Lease is made for 41 years to *W. Cicell* if he live so long, and if he die within the aforesaid term, that the wife to the said *C.* shall have it for the residue of the said year, &c. *per Dier & Catlyn,* the term is ended upon the death of *Cicell*, and then there is no residue to remain to the wife, and therefore that limitation is void.

254

699. Where other time convicted is objected against Clergy, and the Iustices *per* the Stat. 34, and 35. *H. 8. 14.* shall write to the Clerk of the Crown to certifie the first conviction, this writing shall be in their own names: But where the Iustices of one County or Circuit write to the Iustices of the other, to certifie the attainder of the principall for arraignment of the accessory, there the better form is *per Writ* in name of the King, *vide Stat. 2. and 3. Ed 6. Cap. 24.* which had words as *supra.* *M. stris Sanders* was accessory to the murder of her husband, because the principall was but a murderer, it shall not be *perjury* treason in the wife, 40 *Assi 25. accord.*

Connfance

700. Conuſance of a Fine was taken *Hill. 20. H. 8* where the *ded'* in *potestas'* made not mention of the County, and all is certified the ſame Term, and the Kings ſilver entred, but the Fine was not ingroſſed, but remained in the office of the Chirograph' And it was reſolved that it may be now ingroſſed: but becauſe it is at the election of the party to have it either with, or without proclamation as before *4 H. 7.* and he is dead, ſo that now no election may be made, it ſhall be a fine without proclamation, as at the Common law. *Cromptons Caſe.*

Mich. nono Eliſabethe.

701. Debt by *Bowls* for rent behind, and counted that his Termer deviſed to the Defendant the term and died, and that the Defendant entred and was poſſeſſed, and for arrearsages, &c. the Defend' demur' 1. becauſe he had not alleged that the Devilor had made executors, and that the Defendant entred with their agreement. 2. Now he ſaw not *virtute Cui' leg.* the Defend' was poſſeſſed, and if by other title (as the moſt ſtrange ſhall be taken againſt the pleader) he ſhall not be chargeable of any ſuch rent.

255.

702. *Bell* recovered in a *Quare impedit* againſt the Biſhop of *Norwich*, and upon the *alias breve Ep.* he returned that before the receipt of the Writ, the Plaintiffe preſented, but he reſuſed, becauſe criminous, viz. a haunter of Taverns and unlawfull games, But it was holden by the Juſtices that no evill prohibited, but onely *malum per ſe* is criminofity, alſo he had not excuſed the not return of the firſt Writ *per this, &c.*

703. A Forreiner as well as a Freeman may demiſe his Lands in *London* *per* the Cuſtome, but not in *Mortmain* without liſenſe of the King, and where Liſenſes ſhall be onely to Corporations, ſpirituall or temporall within the City, *vide 38. Aſi. 18. que ſerta de Citizen.*

704. The Condition of an Obligation was, that if the Obliger suffer the Obligee his Term to enjoy, &c. and that without trouble, vexation, or interruption of himself or any other, &c. A Copy holder who had Elder right entred, the condition is not broken by the Court, for (suffer) is a Passive word, and imports not that he ought to do any act; Notwithstanding if he proves disturbance the Obligation is forfeit, and all the subsequent words depend upon the word suffer.

705. He which had a benefice over 8. pound, took another without dispensation, the first is void *per Stat. 21. H. 8.* as by death or resignation. And *per Curiam* needs not notice, for the Patron may here as well take notice as the Ordinary.

706. Value of Marriage lies without tender *per Welch and Brown* and 31 *Assis. Weston and Dier* doubted because of 21. *Ed. 4. 51. 47. Ed. 3. 1. H. 7.* and the words of the Statute of *Merton, Cap. 6.* but because the Plaintiff, Here in his Writ and Count supposed tender, he gave advantage to the Defendant to traverse it.

707. *Pertons* Justices, a demise made 4 and 5. *P. & M.* to the Master and fellows of *Trinity Colledge* in *Cambridge* for to find Grammar Schools and poore Schollars, was good by *Stat. 1. and 2. P. & M.* which inabled to devise to spirituall Corporations, for the said Statute ought to be favourably expounded.

256.

708. The Commissary of the Bishop of the Diocesse granted Letters *ad colligend'* without his proper name & *ad vendend' ea qua peritura essent & composum inde*, &c. he to whom the Letters were granted sold things that would perish, he is executor of his own wrong adjudged, For the Ordinary himself had not such authority, and also the proper name of the Commissary, to the Ordinary ought to be expresse.

709. Dower by *Elizabeth Mitchell*, Tenant vouched

(as Lessee for life of a Lease of the husband with warrant) the heire of the husband in ward to the King, for cause of Gard, and prayed aid of the King, and had it, and after a *procedend* and he had judgement, and the Demandant recovered against the Tenant, and Tenant against the heire, *sed expectet executio*. If the infant ought to warrant till he come to full age, and till the hands of the King be amoved. It may be discontinuance *per entry* of the aid, prayer and *procedend* for the parties were *fine die*.

710. Entry of proclamat' upon Fines notwithstanding 4. H. 7. begin not till 6.

711. Trespasse *de muliere rapta, & abducta cum bonis viri*, as it seems shall be brought where the abduction and detention was, and not in another County, Judgement was stayed because the Originall was returnable *coram nobis*, being brought in the common Bank.

257.

712. Tenant for life surrendered one moiety, the Lessor granted the intire land to a stranger, *habend* the one moiety for life, the other for 40 years after the death of the Tenant for life *reddend* annually 40 pound, he may distrein and avow for the intire rent presently although that one moiety be but land reverting, for the reservation is intire, but because he avowed as in land charged to his distresse which is the Form in a rent charge, and so he shall avow upon him as his Tenant *per the Mannor*, and because he did not sever the Moitie, but said generally that the seis' *in Dominico suo ut de feodo les. &c.* where the moiety was not in demesne, the Avowry holden insufficient.

713. A writ of *Pleg. acquiteand.* for that the Plaintiffe was obliged with the Defendant, as surety by Bill obligatory, and was arrested *&c. defend' cognovit assionem* judgement given that he shal acquit the Plaintiff of the same and dammages. *Quere* which dammages, because it appeared

appeared not that he had payed the money to the Creditor.

714. Tenant for life, the remainder in Fee, tenant for life demised for 15 years and died, he in remainder entred, and the Termor brought a covenant against the Executor of the Lessor upon the demise, and adjudged that it lieth not, although the Lease was by Indenture, except it had been broken in the life of the Testator, otherwise it is of a covenant expressed, But then if the heire ought the Termor of his Father, a covenant lies against him upon the demise for the privacy. By *Brown* the Assignee of a Termor, shall have an action of covenant against the Lessor upon the Demise, and without words Assignee in the case. *Quare & vide Stat. 32. H. 8. cap. 34.*

258.

715. In trespassse the Defend' said the place where is within the Forest, of which the Queen is seised in Fee, & himself is Forester and had walk there by patent, and he prayed aid and had it, and *ex assensu* of the Plaintiffe. *Quere* 11. H. 7. tenant at will of the Queen who was Patentee of the King shall not have ayde in trespassse because a stranger, also no losse to the King in this action.

Hill.

716. *In cessione firma de decimis garbarum, qmodam horreo & gardino Rectorie*, judgement entred that the Plaintiffe shal recover the term to come in *Rectoria horreo & gardin'* and a writ of seisen, or to inquire of damages awarded, which was returned more then the Plaintiffe counted, and judgement upon that given, and diverse exceptions to the Indgement. 1. Because it is of a Rectorie of which he had not complained, but that holden but surplussage. 2. because no expresse Indgement for the tythes. 3. Damages are assessed for the intire Rectorie whereof there is no complaint. 4. The writ

writ of Seisin was awarded without prayer of the parties. 5. Also the writ was, *quod querens recuperasset possessionem termin.* which is false. 6. Also because more damages were found then the Plaintiffe did count for. And if this judgement be erronous and emendable the same Terme, or good as it is, *Quare*

717. He in reversion received in default Tenant for life pleaded to the issue which was found for him at the Assises, and before day in the Bank, Tenant for life died, if the writ shall abate, *Quare County Suffex case.*

Pas.

718. Sir John Savage granted a Stewardship for life, after he granted to another the reversion *post mortem primi cum feod' pro exerc.* with clause of distress: Adjudged that the second grant is void, because there is no reversion of that; so in case of the King, yet the King may grant an office *exercend.* after the death of the first, which a subject may not; also the Fee above is void, for it was an executory recompence for the execution of an office.

719. Two advowsons are in *Illesfields*, viz. *Saint Martins* appendent to the Mannour of E. and to *All Saints*, which was in grosse, both being void, *All Saints* by absent of the Patrons and Ordinaries were united to *Saint Martins*, and it was ordained that the Patron in grosse should have the first presentment, & *sic alternis vicibus*, which had been done according many times. Now the Patron in grosse granted his patronage to the use of himself for life, the remainder to his wife for life, the remainder to his right heires, and died, the other Patron presented twice together and died, which was an usurpation (for it is not as amongst Coparceners, who are privies of that blood) the wife died, the church void, and the right heire presented, who was disturbed, and brought a *Quare impedit* of the Church

Church in *Illes*. without naming of *Saint Martins*, and well, for after the union there was but one Church there. *Quere* if the right heire be to have as purchaser or by descent, for if as purchaser it seems he is without remedy, and it seems notwithstanding the union, that the advowson of *Saint Martins* appendent for every second turn, according to 43. *Ed. 3.* and there are not moities as between Joint tenants or tenants in common, who make composition to present *per turn*, for there one time is a moitie.

260.

720. In a *Quare impedit* brought by *Basset* against the Ordinary, Patron, and Incumbent, the Ordinary claimed but as Ordinary, and issue between the others, tryed for the Plaintiffe, and the common points, *ex officio*, and Iudgement given by the Iustices of *Nisi Prius*, according to the Stat. *west. 2.* and a writ to the Bishop was awarded, and the record being remaind' to the Bank another writ was awarded to the Bishop retournable in the Bank, upon which the Bishop returned, that hanging the *Quare impedit per* an office title was found for the King by minority of the Plaintiffe being his ward, and the King presented, of which the Church is full, which excused the not performing both writs, and he shall not be estopped of this Return, for his plea *supra* is not any plea of plenarty, as it is of the Patron and Incumbent, and if this Return be false the party may have a *Quare non admittit*, and also he may have a *Scire facias* against the first and new Incumbent according to 21 *H. 7.* and there came the title of the King in debate.

721. Debt upon a Lease for years of severall parcels, the parties to the issue upon *non demisit*, it was found *de demis.* but one such a parcell, and of that *non demisit*, and assessed damages, the Plaintiffe must not have judgement.

722. The Queen granted the ward and marriage of the body. saving the land, the Grantee tendered marriage which is refused, for which the Grantee prayed detainor of the land at the full age of the heire. But holden that the Statute 32. H.8. for the erection of the Court of Wards gives not authority to retain, but onely for livery to be sued. Also that the Statute of *Marbridge* gave not authority to retain for the value, where the body and land are severed.

261.

723. Partition against two, the one confessed partition, the other pleaded to the issue, and in the record of *Nisi Prius*, the name of the Defendant is omitted, per negligence of the Clerk, and written & *prædict. Similiter*, and no more: also the Jury were between the Plaintiffe and both the Defend. whereas one of them is no party to the issue, but because apparent it is amendable, and for that the Jury taken three Iustices agreed but *Brown* held it is not amendable, because the Iustices of *Nisi Prius* are onely authoris'd to a certain purpose, and are not Iustices before whom the Record resides.

724. *Cuthbert Musgrave* in an appeal of murther upon nothing culpable pleaded, is acquitted of murther, but found culpable of Manslaughter; it was doubted; if hee shall bee discharged of the appeal, but after he prayed Clergy, the Queen may not pardon the imprisonment, for it is the execution of the party, and the Defendant shall not make purgation: But *Quare* of the burning in the hand. Voluntarie & *ex malis. præcogit. interfecit*, is not sufficient in an Indictment of murther, without *murdravit. per Catlyn.*

725. A man seised of land in a town, and in two Hamlets of the town, demised all his lands in the town and in one of the Hamlets, nothing of the Land in the other

262.

726. A man made a Lease for 30 years. and four years after made another Lease by those words, *Noverint, &c. no. dict. 30 annis finitis dedisse & concessisse B. habend. à die consecution. present. termin. predict. finito, usque suum termini 31 annorum*, and the words *à die consecution.* were drawn through with a Line per the Lessee, but remained legible, and the Justices of the common Bank subscribed their opinion in *Hibern.* that the lease begins at the end of the thirty years, and it shall not be intended *de consum.* in the first terme; because most strong against the Lessor, but clear the defacing being the Act of the Lessee himself, although it be not in a place materiall, makes the lease void.

727. The Condition of an Obligation was, that if *I. S.* prove not a suggestion of a Bill depending in the Court of Requests before *ut as Hillarii*, then if he pay 20 pounds, &c. it is a good plea in Bar, that *I. S.* died before the *ut as*.

728. Debt due to a *Felo de se per contract.* is not forfeit to the King; for then the party shall be rebut of his law.

Trin. 263.

729. False Iudgement in a Iudgement given in ancient Demeane upon a *droit close*, there prosecute in nature of an *Ayell.* one Plaintiffe was nonsute and severed: the Sutors would not make Record to the Sheriffe, but would be advised, Distresse issued against 7 named in the Return who refused, upon that they onely brought the Record, and Errors assigned. 1. Because in the stile of the Court no mention is made before what judges. 2. There is no officer named in the award or return of the Summons. 3. No day prefixed to the tenant in the Summons, but *ad proxim. Curiam.* 4. The tenant made Attorney within age, 5. no warrant

rant of Attorney entred for the plaintiffe. 6. No names of the Summoners returned. 7. Tenant within age, and in by discent ousted of age. 8. Refusal to receive Demurrer: and upon *non sum inform'* the Court proceeded to the examination of Errors, and reversed the Iudgement, and award that he should be restored, but no costs or damages, and the Sutors were amerced to 7 pound: and there where the Custom is that an infant may make a Feoffment at 16. years of age, yet he may not answer to actions, but the plea shall abide.

730. The husband and wife, and *A.* purchased to them, and to the heires of the Husband and *A. A.* he released to the husband without words of enlargement, the husband and wife made a Lease of all rendering Rent, the husband died, the heire of the husband award to have one moiety of the Rent, for the release inures to the husband onely, and not to the wife, and there needs no words of enlargement, because he had Fee, *contra* if the Release had been to the wife who had but for life.

731. Dower by the Lady *Arundell* against *F.* who made default after appearance, and a Termer *per Stat. of Glocest. cap. 11.* came to save his Terme, and was received to plead, who said that the husband of the wife was attaint of felony by the Parliament, and a Commission issued out of the Court of augmentation, which assigned the third part of the lands of the husband in Dower, upon which the Rent reserved upon the term by her husband was assigned to her, the which the woman accepted; Also after the King granted the Dower under the Great Seal, and averred Collusion between the Demandant and Tenant, to make him lose his Terme. And holden that if it had been good matter, it should be allowed to the Termer to save his Term, *quavis pu. al tisle del dower.* But the assignment of dower

Dower is void in the Augmentation Court, for it should be in the Chancery. Also the Authority is not pursued in Assignment of Rent, and then the Confirmation of a good Assignment is void, and the plaintiffe had Iudgement.

264.

732. A woman Coppyholder for life took a husband, the Reversion of the said Coppyhold was granted to three, viz. to *A.* and *C. cum acciderit post mortem Surrend.* or *forisfact.* for their lives successively according to the Custome, The husband surrendered to the use of *A.* for life, to whom the Lord granted a Coppy for the life of *A.* And *B.* died, and the opinion was, that *C.* shall not be admitted, for after the death of the husband the wife may enter, or have her plaint in nature of a *Cui in vita*, and during the life of her husband the lord shall not have it in nature of an occupant, after the husband and the wife would have released to *C.* and the Lord would not hold Court, till he was injoynd in Chancery to hold Court or in avowed possession.

733. A new Assignment of Trespasse was in one *agra terr. five prat. in camp. vocat. N.* the Defendant pleaded *non culp.* but for the incertainty of Land or pasture, and also because no abbuttells the jury was discharged.

734. The husband, and wife, Teniers of the three Conies in *Fleetstreet*, the husband let part of the Term per those words, the house called the three Conies, with all the chambers, cellars and shops, except to the husband the shops *ad proprium opus & usum*, the husband died, the wife entered into the shops, and being brought an *ejectione firma* and by the Court, the exception is but temporary to the husband himself, where there are no words of Executors or Assignes, and the exception void touching the shop, because it is repugnant to the Lease of the shops 3 H. 6. 53. for the first part.

735. A man demised Land to be sold by his Executors,

tors, and that the money shall be disposed in Legacies specially expressed, and died, they sold, the Legatory sues in Court Christian, prohibition lies not, for the money is assets, and no remedy but in Spirituall Court for a Legacy. *5.P.&M.*

Decimo Elisabethæ. 265. Mich.

736. The Iury demanded did not appear full, and the Defendant came not, *opinion* the inquest shall be awarded by default, for the parties are demandable before the Iury, and if the Plaintiffe had made default, he should have been nonsute.

737. In account as receiver by the hands of the Plaintiffe the Defendant waged his law, and at the day, &c. he would have confessed the action for part, and made his law for the residue. *Curia præter Harper*, that the confession shall not be received.

738. The Iustices of Peace ought to certifie into the Chancery, their agreement made upon servants wages, six moneths after *Pasche*, according to the fifth of *Elisabeth*, upon penalty of 10 pound, and that by the words and the intention of the Statute.

739. In Debt against the Lord *Cobham* they were at issue, and a *venire facias* returned, served, and proces continued against the Iury till the Distresse, and the Plaintiffe perceiving the array quashable, because no Knight returned, he prayed a *venire facias de novo*, and might not have it, for no better writ could issue than at the first.

266.

740. *A. B.* Tenants in Common of a Mannor, *A.* purchased a Franktenem' so mixed with the Demesne that it was unknown. *B.* brought writ of Partition of the Mannor notwithstanding, and Iudgement given that they shall make Partition, and a writ to the Sheriffe according, *tenuis per Justic'* that *A.* ought to shew the bounds of the Franktenement and *B.* needs not to

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shew

shew the bounds of the Mannor to the Iury: but if evidence be given of no part, if the Iury make Partition of so much quant. *presumitur & dignoscitur*, it sufficeth, for they are compellable to serve the Law and the Court; at the day appointed to give verdict, one Iuror made default, the Sheriffe returned a Fine of 40 shill. upon him, and the difficulty of the matter, & *quod nihil ulter. fact.* *propter brevitatem temporis* *Quere* of the Return and of the Fine. *Temple* against *Cook* and *Watton*.

741. The husband being *Cestuy que use* before 27 caused the Feoffees to execute estate to him and his wife, and to the heires of the husband, and declared not in the deed to bee for jointure, *Quere* if it shall be intended for Ioynture except it be now averred.

742. Entry in the *quibus* against 3, one being Sheriffe returned that he might not summon himself. *Quere* for he appeared and after pleaded that in arrest of Iudgement 18.H.8. *Fitzh.* the Sheriffe may summon himself.

743. An Inholder commanded one of his guests to put his goods in such a place under lock, otherwise he would not warrant them; the guest suffered them in the outward Court, where they were taken away, *per opin' Curie*, the Inholder shall not be charged. And it behoves to shew in writ and Count that the Defendant is a common Hostler.

744. I.S. built upon the waste of a Mannor whereof the Queen was seised, the Queen granted the Mannor to the Earl of *Leicester*, after I.S. died seised, *Me' opin'* that it no discent against the Patentee, because at the first it was a disseisin against the Queen.

167.

745. A Lord seised not, nor claimed his villain, nor his issues within a hundred years, so that a *Nativo habendo*

lando lies not against the issue of the villain, because of the Statute 22. of Limitation. It seems in favour of liberty he may not seise; notwithstanding by *Sanders* and *Dyer*, *Quare* well between *Butler* and *Crouch*, *vide* 11. *Eliz.* 28.3. where in Assise the Iustices admitted forrein trial *ex assensu partium in favor. libertat.* And holden, Error. Also they received a speciall verdict upon issue joyned upon traverse: also because the issue is not upon Frank, & *&c.* but upon seisen of the villain. Also *Butler* prescribed in seisen, where he and his Ancestors failed after 1.H.7.til now, although seised of the Mannor to which, *&c.* for that, *&c.* Error.

746. The Bishop of Saint *David*s by license of appropriation made a Church Collegiate, and Prebends in that, and appropriated to every Prebend a Church, and that was after confirmed by the King, that was taken a Colledge within the Statute 1 *Ed.* 6. *collegium est quando plures simul colliguntur. &c.*

747. In trespassse the Defendant said that he had piscary in one County from time beyond, *&c.* and prescribed to draw into the Soil of the Plaintiffe in another County, and both were traverse. The issue is triable by both Counties.

268.

748. Tenant in *Capite* made a Feoffement per collusion to defraud the Executions of his Creditors, with condition that when the summes shall be discharged, that his Feoffees should convay to such uses, as he or his heirs should appoint, which is found upon *Mandamus*, & *quod nulla alia causa aut intentio fuit.* The Queen shall not have the ward of the heire, for it was not to defraud her of the ward, decree *vid.* *Marleb. cap.* 6. & 34. *H.* 8. *cap.* 5

749. A writ of false Iudgement shall be *re. fa. lo. qua fuit in eadem cur.* and not which is, for the plea is determined upon the Iudgement,

750. A man held a Messuallty of the King in Chivalry in Capite, and the Tenant held certain Lands of the mesne in Chivalry, and also held other Lands of the Duchy of Cornwall in Chivalry. The King granted the Duchy to his eldest son *simul cum wardis & marriag. non obst. Prærog. Regis*; the Mesne died and his heire in ward to the King, the Tenant also died, and his heire within age, the King shall have the prerog. of the ward of the body and marriage, because of the Gard, for generall words in the Kings Patents shall not have a speciall intendment as that *supra* in speciall case. And divers notable cases put, where a generall Patent shall not extend to speciall cases. And by *Saunders chief Baron*, Issues, and amercements are not allowed any in the Exchequer, upon their Charters of generall grant, except they be specified in what Court. And upon grant of Fines, Issues, and amercements sont Tenants, A Fine upon a Constable, Sheriffe &c. shall not passe, except there be clause, *licet ministri sive officarii nostri fuerint*.

751. Cases vouched where words *ex gratia speciali, certa scientia, & mero motu suis*, make generall Patents of the King, to have speciall intendments, *vide* the difference between false suggestion, false informat' false consideration, and false cause.

Hill.

752. The Prior of Saint John of Jerusalem, and his confreres made a Lease by Indenture to three at will, one died, the Lessors 4.H.8. per indenture reciting the death of one, and that the first Indenture is surrendered and cancelled, they made an estate to the survivors, *habendum iis & heredibus*, but no Letter of Attorney to make livery, & adjudged void, for by the surrender of the Indenture the estate at will is determined, so that now the second grant cannot inure by way of confirmation. D. *Quare* if the death of the one determine not the will,

will, for an estate at will may not survive.

270.

753. A writ of Covenant to levy a Fine is returnable in *crastino Purificat'* one of the middle returns of the Terme; and the concord is made and recorded, the same *Crastino ut oportet*, and the third day after, *viz.* before the fourth day after, the first Proclamat' was made, and well, for *die Crastino* is the return day, and the fourth day after, is but a day of grace, but if it had been return *Ostab. Hill. Quere*, because the Iustices sit not, being the first Return of the Terme, till the fourth day, whereas the Statute 4.H.7.is, that it shall be in full Court.

754. Queen Mary granted one a Licence to sell wines by retail with *non obstant'* the Statute 7.Ed.6. and limited not how long, but there is a commandement in the Patent to the Officers to permit him for life, and holden by Dyer and Sanders, it shall be *durante bene placito* onely, and that the pleasure is determined by the death of the Queen: also the command by her death ceaseth.

755. The husband and wife, seised of a Mannor, and to the heire of the husband, the husband granted the Stewardship to *walton* for life, the remainder by the same deed to the son of the said *walton* for life, and a Rent Charge jointly to them for exercising the same out of the same Mannor; a Coppy-hold being by escheat in the hands of the husband and wife at the same time, the rent is behind, the Grantor died, *walton* died, the wife granted the Copyhold upon which the son distrained for arrearages in the life of his father, and the Plaintiffe in Bar to his avowry averred not the life of the wife, *per Curiam* it is maintainable, for the Coppy holder came under the Charge. But contrary if a Copyhold had been surrend' to *I.S.* who after had been admitted, and if he avow, it seems he ought to shew that

he continues to exercise the office, for if it cease, debt onely lieth for the arrearages, &c.

756. In a writ of Right, the four Knights retor^p pannell, *venire facias* in nature of a *habeas Corpus* shall issue to the Sherriffe which names their names, and if they appear upon that they shall be taken.

757. In debt upon an Obligation with condition to perform Coven^t brought in Land, the issue was if the Defendānt was true possessour of certain Lands in Bedford at the time of the Indent. the triall shall be in Bedford.

371.

758. Debt upon escape lies not against the heire of the Gaoler, for the heire shall not be charged with a debt, due either by the Common Law, or Statute Law, except he be named, neither although it be recovered in the life of the father, but by *Elegit*, where he shall be charged as Land Tenant *per Scire facias*, vide 21. Afilise, Debt upon escape against the Execut. of a Gardian lieth nor.

759. Arrearages of a rent Charge be due to a feme sole, she took a husband who made an acquittance of one feast after the coverture, and by that, all the Arrearages is gone, *per Dyer and Harper for per 11 H.4.24.* it is a positive Law, that an acquittance for the last day dischargeth the arrearages, but *Weston and Welsh* contrary, especially the arrearages being when the woman was sole, 1. H.5.7. *per Norton.*

760. The husband and wife outlawed, the wife came in ward by Procelse, and had a Charter of pardon, she shall be discharged of the Imprisonment, but the Charger was not allowed, because she may not have a *Scire facias* against the Plaintiffe without her husband.

761. A Gardian during the minority of the issue in rail (which is but of the age of one year) let for 10 years, the Land never being in Lease before, that is

not such a Lease for 20 yeares, which inables Tenant in tail to make a Lease with 32. to bind the issue; so of a Tenant in Dower, or *per courtlesie*, or the husband in Right of his wife, for they have no inheritance, but *Quere* the Donor.

272.

762. Debt against the heire who pleaded nothing by descent, the Plaintiffe replied that he had assets in *Lond'* and now at the *Nisi Prius* gave in evidence assets at *Cornal*. *Quere* if it shall maintain the issue, and if *Lond'* Jury may take notice, but of goods the evidence shall be good, because they are transitorie.

763. A Termor granted his Term *habend'* after the death of the Granter it is a void *habend'* and the Term passeth presently by the premises adjudged.

Pass.

764. The servant of *A.* was arrested in *London*, upon a Trespass, & two which knew his Master bailed him, after *A.* promised them for their friendship to save them harmlesse of costs and damages, &c. If afterward they are charged, yet an action upon the case lieth not, for it is no considerⁿ for the bailing of the servant was of their own heads, as was executed before the *assumpsit*, but if the Master had requested it before, and promised after *ut supra*, peradventure otherwise it should be, as in consid. that one hath married my daughter at my request, I will give, &c. it is a good considⁿ because the marriage issues and follows my request, and Land may be given in Frank marriage after espousalls.

765. The Executors of a Tenner rated the Copper or furnace fixed by the Termor himself, it was holden waste, and if waste be assigned in *domibus & boscis*, the Plaintiffe may not so abridge the waste to relinquish all in the houses or *contra*. And if many issues are joyned, and one be a Jeofail, yet the other issues shall be tried by the same Jury, but the new issue shall be tried

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upon

upon a *venire facias*, *Dominus Burgavenny*.

766. A Lessor Covenanted and granted to a Termer that he should hold the Land to him, and his present wife, and the wife which after he shall marry, for term of life of the Lessor, and no livery made, three Iustices, that it is not a Surrender of the Terme, nor a confirmation, but a meere Covenant onely; but *Weston* held contrary, because of the word grant. *Sackford*.

273.

767. The Deanry of *Wells* was dissolved by Parliament, and a new Deanry created, to which the possessions of the Prebend of *Cory* were annexed, (note the Prebend it self was not annexed) therefore *Quære* if the Dean after was justly deprived, for the Prebend of *C.* was not extinct: And by the sayd Act it was ordained, that the King may make a new Dean, and that the new Dean may make Demises, as the ancient Dean did. The King made *Goodman* Dean who took the Prebend, of one of the Prebends of the same Church, upon which the Bishop *per* Commission of Visitation did deprive him, for taking of two dignities in the same Church, against the Canon of the Civill Law, which was also affirmed upon appeal to the Arch-Bish. *Cant.* and a new Dean made, upon which he appealed to *Queen Mary*, and by Commissioners Delegates the said deprivation was disallowed, upon which he made Demises which were confirmed by the Bishop and Chapter, and after upon another appeal to the Commissioners Delegates he was removed, and the other Dean restored, who would have avoid the leases, upon which issue was joyned if *Goodman* was Dean at the time of the making, and found that he was, and so the leases good, also it was agreed, that a Deanry is a spirituall promotion, and not temporall. It was doubted if the taking of a dignity in the same Church, made the Deanry

Deanry void, or but voidable by sentence. Also it was said by the interest of the Bishop taken away by the Act, the Bishop is not bound for the spirituall jurisdiction to Visit, but temporall personage. Also that the Demise of the Dean need not the Confirmation of the King, nor of the Bishop, but onely of the Chapter, for Deanry is not donative, as is of a person and Prebend.

274.

768. *cestuy que use* in tayl before 27. suffered a Common Recovery with single voucher, and died without issue, the Feoffees may now enter or have an action to revive the use to him in remainder.

769. Two brothers and the eldest had cause of Petition to the King for Lands, and the youngest had issue a son, and is attaint, and executed for treason, the eldest died without issue, the son of the youngest is restored in blood onely, as to his father, but so as that he shall demand the Land of any Collaterall ancestor, as if no such attainter had been provided that it shall not extend to land in the hands of the King by attainter, and saving to every person their interest, it was holden that is inabled to Petition *supra*.

770. John Mutton levied a Fine of Lands, to the use of himself, and of such wife or wives, as he shall marry, and after he married one A. she shall take in Iointure *per wray*, Mead, Plowden and Onslow being upon use, contrary upon an estate executed, and so it seems that feme is a good name of purchase; but *Quere* if this be a Iointure before or after Coverture, and in whom the use was before the marriage, and of what estate. 15. Ed. 44. possession of the brother of an use made the sister heire.

275.

771. A *certiorare* was awarded out of the Kings Bench to the *Custos breviarum*, to remove the very Record of

of a Fine, after Errour adjudged upon the transcript, and that to the intent to take away the Fine to the *Filaciis*, and Cancell it in the Kings bench, and allowed, But another of removing a Record of *Nisi prius*, whereof Attaint is brought in the Kings Bench, but that was not allowed, but it shall be by *Certiorare* out of the Chancery, of the tenor of the Record, and so shall come into the Bank by *Mittim'*.

772. The Marshall suffered one in Execution to goe at large by commandment of the chiefe Justice, the Plaintiff agreeing to that, after he recame, he is in execution again, so if he put at large by Writ of Priviledge from the Parliament, for the going at large *ut supra*, is not an escape, and therefore if after hee recomes again, he be suffered to escape, debt lies against the Gaoler.

Hil.

773. False imprisonment was brought by *Foreman*, the Defend' pleaded that the Plaintiff is excommunicate, for malicious drawing of his dagger in the Churchyard, to the intent to strike *A.* and is indicted of that, *Quere*, if the words of the statute 5. Ed. 6. cap. 4. that he shall be excommunicated *ipso facto*, shall be intended without sentence or prooffe. But it was agreed that without Conviction or outlawwry the Indictment is not sufficient for to make him to sustain the corporall punishment in the statute to lose his care.

276. *Trin.*

774. The Lo. *Dacres* let land and a stock to Friends, who Covenanted to pay 100 pounds *per ann'* to him, and his Wife, his Heirs and Assignes during the terme, and 2000. l. at a certain day for marriage money of his Daughter: The Lo. *Dacres* died his son within age, and he suffered more then the third part of all his land to descend; Adjudged that the Queen shall not have the 100. pounds *per ann'*, but the Executors of the wife, for
it

it is no rent which should goe to the heire, but remains in grosse, and adjudged no Collusion to defeat Wardship, because the third part left, which satisfies. 34. & 35.H.8.

277.

775. A *Scire facias* by *Basset* against the Corporation of *Torreyton* for repealing their Patent of Faires and Markets: But holden the younger Patentee shall not have a *Scire facias* to repeale the ancient, but *contra*. And if the last Patent be of Faires and Markets to be holden at other times than the first, it is no cause of repealer, for it is a distinct thing from that first granted.

776. After title of laps came to the Queen, one is presented by the Patron, and admitted, instituted, and inducted, *per* the *Metropol'* *Quare* if prejudice to the Queen, or if the Queen her selfe be holden to admit such a present of the Patron.

777. The Byshop-collated by laps, the Patron presented before induction, yet the Bishop may refuse to admit him.

778. A Ward fell to the Bishop of *Durham* by a tenure of him in Chevalry, who died before seisure, his Executors shall have it, and neither the King nor his Successors.

779. A *Forweden in remaind'* *per* *Eloft*, upon a remainder in use, limited after 27. *per* *Just.* hee needs not to shew the Deed of the remainder for two causes; First, because in this case a remainder may be created without Deed. Secondly, because the deed appertains to the Feoffees, and not to *estuy que use*.

780. Lessee for yeers demised his terme to his Executors for life, the remaind' over to A, and died. The Executors entred, and made Executors and died, the Execut' of the Execut' entred, but in remainder brought an Attempt of the profits, and it lies not, for fault of privacy

vity. 2. because the Executor had not Declared to the terme as D devisee or as Executor, and it shall be intended as Executor till the contrary bee shewed. 3. Because the remainder of a terme is void; *weston, welsh*, and *Harper* that good, of a Devise void of a state executed.

278.

781. The Prior of *St. Johns*, had priviledge from *Rome* that he should not pay Tythes of any lands, *que prop' mmbus aut sumptibus excolunt*, but the Termors they payed tythes; The Prior made a Leale for yeers before the dissolution; The King after the dissolution granted the reversion. *Tenus* that after the terme expired, the Patentee shall hold discharge, if the *Prop' manib' excol'*. But if he make a Lease, the Termor shall pay by statute 31.H.8.cap.13.

undecimo Elizabethæ. Mic.

782. A Corporation per the name of the Deane and Chapter *Ecclesie Cathed' sancte & individ' Trinit' Caerli'*, made a Lease by the name of *Decanus Ecclesie Cathed' sancte Trinit. in Caerli' & totum Capitul' de Ecclesia predicta*. six were against three, that it is good notwithstanding the variance, which is not in substance of the name, *vide* 35.H.6. 5. & 6. a Prior sued by name *Ecclesie sanct' Pet.* where the foundation was *Peter. and Paul*, and holden evill.

783. A *Formedon in discender*, is out of the statute of Limitations, 32.H.8. and was not in any other of the ancient statutes of Limitation.

784. *Habere facias seisinam*, upon Recovery in Dower, the Sheriffe returned that he proffered seisin to the Demandant of the third part by meales and bounds, who refused; Notwithstanding by *Harper* and *Dyer* the entry of the Demand' is now congeable, for the certainty is known, & *alias Habere facias seisinam*, never granted by any president.

785. The

785. The Duke of Norff. being Marshall of England, and having authority to make a Deputy, he made one Gawdy his Deputy, who was sworn in Court, &c. after Gawdy licensed a Prisoner in upon Execution, to goe into Norfolk with a Keeper, for which the Plaintiff brought a Debt against Gawdy for the escape, and recovered notwithstanding he was but the under Marshal, and notwithstanding the action brought in Middlesex, supposing the escape at Shoreditch, and not in the County of Surrey where the Marshallcy is.

279.

786. A *Scire facias* upon a Recognizance, to performe Covenants where one was to permit his tenants to have common in D. an other that he would not doe any act to alter the courses of the fields in D. the Defendant said that he had permitted, &c. and that he had not altered the course, &c. and it was Ruled that this generall pleading was very good.

787. Tenant for life, the remainder in tayle, a stranger levied of that, as that, &c. to he in remainder in tayle, who rendred to the Conusor rendring Rent, and died, and after the Proclamations passed, the tenant for life died, and the issue in tayle accepted the rent, the Fine and also the acceptance of the Rent affirms the Lease, for the Causes in *Stapletons* case, *Comment Manwood*. If tenant in tayle made a Lease for yeers to begin after his decease, rendring rent, the acceptance here is no Bar to the issue in tayle, because the Lease took not being in the life of the father, *Cathyn* denied it.

788. The next avoydance is granted to two, who joyn in a *Quare impedit*, the one dies, the next shall abate, *Fitzb. Brief*, 665.

789. *William Shorbolt* was obliged by name of *John*, and an action brought upon that against *William alias dict. John*, the Defendant pleaded *non est factum*, and the matter found upon speciall verdict, and adjudged that

that the Plaintiffe shall not recover upon this Verdict, but that his action ought to be against *John*, and the Defendant shall be estopped by the Obligation to say that *William, &c.*

280.

790. The Citizens of *York* incorporate by *Richard 2.* by name of the Mayor, Sheriffs, and Citizens, they now prescribed, that Wares forreigne bought, and forreigne sold, have been of time beyond memory, &c. seisable by the Mayor, Sheriffs and Citizens. Whereas before the time of *Rich. 2.* they were Mayor, Bayliffs, and Citizens. *Quart.* yet it is admitted a good prescription *ut supra & travers.* and the *venire facias* issued to the Sheriffe of the County, for the officers of the City were Citizens.

791. The Prior and Covent of *Norwich* made a Lease for 24. yeers 24 *H. 8.* to *A.* after 26. they made a new Lease to *Corbet* for 99. yeers, And in the 30. the Priory was translated into a Deanry, and now they made a new Lease to *Corbet* for 99. yeers, and that within the yeer of the statute of dissolution, 31. *H. 8.* and 1. *Ed. 6.* the Dean and Chapter surrendered to the King. 1. The Dean and Chapter is holden to be a body within the statute, for it is spirituall which had succession, although they are not specially mentioned, nor yet the Cathedrall Church. Also the words that it shall be surrendered. to the King, is intendable as well of *Ed. 6.* as of *H. 8.* Also the taking of a second Lease by *Corbet* is a Surrender of the first, although it be not in esse at the time as 37. *H. 6. 4.* is, And also to the other purposes the second was void, because it was within the yeer of 31. *H. 8.*

792. In a *Repleg'* the Plaintiff is nonsute, and the Defendant had Return, and the Plaintiffe sued a second deliverance, and is also nonsute upon that, and a Return irrepreg. is to be awarded, some held without avowry, others without avowry shewing the certainty, &c.

to have a writ to inquire of damages, others held he should detain the Catrell till mends proffered for the damages: and in divers opinions, if he might now work the Distresse, but he put them in pound overt, and if they die, he may take another Distresse for the first cause.

793. In *Repleg'* the Defend' acknowl' the taking as Bailiffe of Sir *Anthony Cook*, as in his Frankten' damage feasant, the Plaintiffe said that he and his Master are Coparceners, and shewed how, and traversed not sans ceo that he sole Tenant of the Franktenement: And at length Issue was joyned upon the Coparcenership, and not upon the intire place to the Franktenement; for but a supposall as a Declaration, &c. and that plea of Coparcen. is but in abatement of the avowry, *alibi* the opinion in Avowry of a Rent Charge, suppos' the Granter seised in Fee of the place, &c. If the Plaintiffe said, that the Grantor was seised in rayl, and he Issue, &c. he ought to traverse *absque hoc* he seised in Fee.

281.

794. The Bishop of *Salisbury* made a Feoffment to *Bullock* of a house and 17 acres of wood in *Bearwood* (the great wood containing a thousand acres) at the election of the Feoffee and his heires, before election *Bullock* died, and 5 discent after the heire would have made election, but it was adjudged against him for 3 causes. 1. Because the Feoffment is pleaded without deed, and election may not be annexed to an estate without deed, no more than a condition, covenant, licences, assent or liberty. 2. Because it is an estate which passeth by livery, and that made the thing certain which passed, and if it be incertain it is void, for after livery there abides no election to make the Frankten' in abeyance. 3. Because election ought to be made in the life of the parties, for before election there is no property, and therefore before election it may not descend

discend. But exception was taken for the pleading, because the Defendant pleaded *virtute cuius* Feoffment^r his ancestor was seised in his Demean as of Fee, whereas he had not made election, &c.

795. A Lease upon condition that the Lessee shall not make any wast, he suffer wast in the decay of the houses, *Dyer* and *welsh* held that the condition is broken, for the Statute of *Glocest.* is *vastum facere*, and yet permissive wast is punishable by the Statute, and (any wast) generall. *Quere.*

382. *Hill.*

796. Resolved *per totum* Iustic. upon Stat. 5. *Eliz.* that if a man imports books over sea written against the Supremacy, knowing the effect of them, and utters them to any Subject, that he is within the danger of of the Statute 5. *Eliz.* 2. That the Receivers if they in conference of them, do not allow them, they are not within. 3. If in conference they do allow of them, they are within particulars. 4. The same of them who hearing the contents affirm them to be good. 5. So also of him which conveys the books secretly to his friends, to perswade them to be of the same opinion. 6. The same of them who print and utter such books within the Realm. 7. Also if such books written within the Realm are conveyed out, and those are bought, read, and conference had upon them.

283. *Pass.*

797. The Arch-Bish. of *Dublyn*, had two Deans and Chapters, to the Sea, the one surrendred without assent of the Bishop all his possessions to the King, after the other alone confirmed a Lease made by the Bishop, and well, *contra* it both had been in esse.

798. A Patron granted the next and first avoidance, and the right of presentation to the same, *jam vacant. ita quod liceat* to the Grantee, *hac unica vice tantum presequere*, the Church being void at the time, the Grantee

tee shall have the next avoidance, and not that, for it is a thing in action, and therefore not of an Avowson not the Avowson it self, yet the execut' shall have it, and the King might grant it in such case.

799. *Cestay que* use of 3 acres in severall places in one County, he made a Feoffement, and a Letter of Attorney to make livery; the Attorney made livery in one in the name of all, and adjudged good. 25. H. 8. Rot. 71. But it seems if the Feoffer had been seised in Demeasne of one acre in which the livery was, it should bee of no value, for the rest *Brooke*. Feoffem. 77.

800. King infeofed two, viz. an Alien and a Dezen, to his own use, it seems if office be found of that, the use to King of the moiety is gone, and the Queen shall be seised to her own use by the Prerogative.

Butler against *Crouch* abridge before. 267.

284.

801. Damages shall not be recovered in Dower, but in case where the husband dies seised, so Statute *Martleb. cap. 1.*

802. A *Venire facias* awarded return' *Mense Mich.* it was not returned at the day, upon which the Defend. sued a *venire facias* with proviso return' *Octab. Hill.* but in the mean time the first *venire facias* upon the file of *Mich* Term with *post diem*; after, the second *venire facias* was returned, and upon that a second pannell, the Plaintiffe pursued a *Habeas Corpus*, and the Jury appeared and found for him: and although that be erroneous at the Common Law, yet because of the Statute of *Icosail. 31. H. 8.* Iudgement was given for *Gray* the Plaintiffe, upon consideration of the point of misconveyance of the Proccesse.

803. In Attaint the Defendants had hearing of the Record being in the same Court, upon which the Plaintiffe assigned the false oath, upon which they were at

P

Issue

fine, and now the record was removed into the Kings Bench, by Writ of Error, yet it seems they may proceed.

285. *Trin.*

804. A generall pardon which discharged suing of liveries and intrusions, it is available although office was not found at the time of the pardon.

805. A Writ of *Scandalis Magnatum* lies not, for bringing an action which imports slander, as a forger of false deeds, especially the Writ hanging indilcussed.

806. An Indictment of an assault and Battery, in one *John* parish Priest without his surname is good as in *quendam ignot.* in an Indictment of murther, and if after he be vexed upon an Indictment in which his very name is put, he may averre it is but one and the same Assault.

807. *Humphrey de Bohem* Earl of *Essex* who held Manors of the King by service to be the Constable of *England*, who had issue two daughters and died, the daughters took husbands, and the husband of the youngest is made King, they made partition. Here were three questions. 1. If it was a good tenure reserved, and it was holden that it was grand Serjeanty. 2. It was holden that the daughter before marriage might exercise the office by deputy, and after marriage it shall be exercised by the husband of the eldest onely. 3. By the unity of the Seigniorie, and parcell of the tenancy in the King, the services are not suspended, but the intire shall issue out of the residue because it is the Act of the law to be King. As where a man who had two daughters held of the eldest by Homage, and died, and after Partition the youngest shall hold in Homage of her sister of her part: so of every other service not apportionable. And after King *H.8.* refused the service *supra*, because of the great fee, and because very high and

and dangerous, that was the Claime of the Duke of Buckingham.

808. The Patentee of the Herbage of a Forest, may maintaine a trespassse, or distraine Damage Fesant, and per 2. Justices he may inclose. But he shall not have an action for the trees, nor of the profits or fruit of them.

809. Upon an exigent after Judgement, the Defendant may not appear gratis, and plead release of Executions, and have a *Scire facias*; &c. But upon a *Cepi* or *Redd ditie*. But he shall have an *Audita Querela* being at large. But at the Exigent to answer, he may appeare gratis.

286.

810. A Pardon by the King of intrusion is not good to the heire without *exitus & proficua*.

811. In an *Enjectione firme*, the Plaintiffe declared of a Lease made to him the 8. day of May, to have and to hold for 21. yeers, then next comming, by vertue of which after, viz. the same 8. day hee entred; And it seems very well, and that he had not entred as Disseisor before the Lease began, for then is immediatly after the delivery, and it shall not be intended, before the date; and the *Postea* declares, he entred not before the Lease made.

Duodecimo Elizabethæ. Hill.

812. At the day of Returne of the *Habeas Corp* or *disting* the Jury and Defendant appeared, and although the Writ be not returned, if the Plaintiffe make default, he shall be nonsuite, for the parties had day by the Roll: But doubted in the Kings Bench.

813. The stat. 33. H. 8. for indictment and tryall of Treasons, confessed before 3. of the Privy Counsell to be in a Forreign County, is repealed per 1. & 2. Ph. & Ma. And now that the Rebels then in the North shall be indicted in the County where the offence is, and the

P 2

indictment

indictment removed before the King in the Bench, or the Justices of Oyer in *Middlesex*, and there shall come of the Country where the Indictment was, or of the Freeholders of the County where the Indictment was.

287.

814. Tenant in *Capite* conveyed by aſt executed for naturall affection the intire land to his uncle for preferment, or to his son, his brother, or other collaterall cousin; And upon a great assembly it was holden by 6. that it is not within 33. which giveth to the King Wardship and primer seisin of the 3. part. But otherwise if it had been to Childrens children in a right line; But 6. others held contrary in both.

815. But *Dyer* held that both were within the statute, and that it is not to be construed or thought that a man should be more beneficiall to one remote, than to a more nigh Kindred in blood; And a gift in Frankmariage may be as well to the Cousin as to the Daughter. 2. *Ed. 6. Brok. Testa.* and holden by the Justices, that although the ſtate executed be to a stranger, that by the generality of the 3. article of the 34. of explanation, the Wardship and primer seisin of the 3. part is saved to the King.

816. A Writ of Priviledge for Office is with a flat *Superſedeas*, and a *Procedend* lies not, if he may pursue where he is attendant; Contrary of he which is priviledged, because he had a ſute depending in a higher Court, as Plaintiffe, or Defendant.

817. Indictments and Outlawries of Treason against Rebels, which fled into *Scotland*, is very good *per ſtat.* 26. *H. 8. cap. 13.* and 6. *Ed. 6. cap. 11.* And as well for Treasons mentioned within the 25. *Ed. 3.* as treasons made by the said statutes.

818. The Bishop of *St. Davids* by Licence founded a Colledge of 13. Canons secular, and one Chantry, and reserved the office & *vicem Decani* to himſelfe. And assigned

assigned the Benefice of *Lamarth*, of which he was Patron and Ordinary, for the living of one of the Canons, and made a Prebend of that: And after by License of the King, without license of the Colledge, he translated the Benefice to the Deanry and died, and the King presented and restored to the Successors, who had alwayes enjoyed it as an Impropriation, parcell of the possession of the Bishops. And now upon Stat. 1.Ed.6. the Benefice shall be to the King or Bishop, and found that the Bishop is seised in the right of Bishoprick, and not of the Deanry, upon issue joyned upon that. Notwithstanding by the *Civilians* his translation, especially to his own use, is void by the Civill Law. As also that there wants sufficient words to make the Bishop Deane.

Pas. 288.

819. A Bill of Perjury may be sued in the Chancery, for perjury committed there; but it shall be in Latine, and the issue shall be tryed in the Kings Bench, but the Defendant shall not be sworn to his plea of *non Culpable*, nor examined upon interrogatories. But if before the statute 5.Eliz.9. this Court had authority to examine perjury, it shall be now, as it was accustomed by the last *proviso* of the statute, which reserves the Jurisdiction also of the Star-chamber.

820. If one who writ the Will of a sick man, and he insert a clause without Warant, after the Testator is speechlesse, it is not forgery of a Will within 5.Eliz.

821. Bygot an Attorney of the Common Bank sued one *per* Attachment of priviledge, he shall find pledges *ad prosequend*, as a stranger shall doe, who sues an Attorney or Clerk thete by Bill. And otherwise it is an Errour as was adjudged.

822. The King lett a Mannor to *Orme* excepting the Courts and *perquisites*, after he Granted the Reversion to a stranger with the *perquisites* and Courts, the Gran-

tee made another Lease to begin after the first excepting Courts and *perquisites*, and holden that the exception is good in the Lease of the King, but not of the Grantee, and therefore the Grantee of the Reversion during the first terme may Grant Copies, but when the second Lease begins he may not, but the Lessee himselfe.

289.

823. *Jura Regalia* were granted to the Bishop of Durham, in the Time of *Ed. 1.* with escheats for Treason within a certain Precinct. After the stat. 25. *Ed. 3.* gave all Escheats for Treason to the King. Also the statute 26. *H. 8.* that he which commits treason, shall forfeit to the King his Heirs and Successors, all their Lands and tenements, in which they have any estate of inheritance. But as to the stat. 25. *per totius Just.* that is but an explanation of what was forfeit by the Common Law, therefore notwithstanding that, the Grant to the Bishop remains good, but as to the stat. 26. *H. 8.* 4. *Justices* held it destroyed the state of the Bishop, yet five held contrary, because there is a saving in the said act of rights to strangers. But agreed that lands enrayled, and lands in the right of the Church: which were not to be forfeit at the time of the Grant, *supra*, but now by the stat. 26. *H. 8.* they shall be forfeit to the King. And so is the forfeiture for new treasons made by statutes after the Grant, and it is there holden that the stat. 26. *H. 8.* when as to treasons at the Common Law, is not repealed by 1. *Ed. 6.* & 1. *M.*

824. *Her Curiam*, Ravishment of Ward shall bee brought where the wrong was committed, and not in the other County whither the Defendant had carried the Ward. But by the statute *West. 1. cap. 35.* a Writ shall issue to the Sheriffe where the body is, to have the body in Court at a day.

825. *Seignior Paramount* avowed for services of his tenant,

tenant, the Plaintiffe who is a tertnor said, that he held of the tenant for ten yeers, whereas hee had 40. and prayd ayd, &c. that shall not conclude him of the rest of the terme after 10. yeers expired; for in the aid prayer the number of the yeers is not material nor traversable; Also the services, and not the land, were in demand, therefore the estoppel is not for the land *per Curiam*. Therefore the Lessor shall have advantage of that.

826. The Bishop of Lond^r being high Commissioner, was translated to York, yet the authority remains by 1. Ed. 6. cap. 2. implicirly.

290.

827. Husband and wife suffer a Recovery in a Writ of right in London of a tenement there (which by the Custome binds as a fine at the Common Law) This was to the use of the Recoverers, untill they had made a Lease for 40. yeers, and after to the use of the husband and wife, and the heires of the wife, the Lease is made, the husband died, the wife shall not avoid the Lease by the limitation to the Recoverers untill, &c. But shall hold under the Recovery, so that the terme precedes her estate. But *Quere* what remedy she hath for the rent reserved, for the wife came in, *en le post*, and the rent was reserved before her use created.

291.

828. A *Formedon* in Remainder by *Fitzwilliams*.
1. The tenant for the moytie vouched B. as son and heire of A. son and heire of C. It is no good Counterplea to the Vouchee, that C. the Grandfather of the Vouchee, nor any of the Ancestours of the Vouchee whose heire &c. never had nothing except joyntly with M. who survived, with averrement that the Grandfather aliened not, &c. without also Counterpleading the seise of the Vouchee himselfe, except he be Vouched as within age, for that the Plea ought to abide, adjudged.
2. And as to the other moiety, except the moiety of

7 houses (some held that evill forspis out of a moiety for a forspis goes to the intire) he pleaded a Fine with Proclamation, and five yeares incurred in Bar, the Plaintiffe counterplead that the parties to the Fine nothing had, &c. that may not be verified by an use in a partie to the Fine, for that is a departure, and it ought to have been pleaded first, for it is well levied by *Cessuy que use* after the Statute Rich. 3. 3. As to that in the forspis, he pleaded jointenancy by Fine, which shall abate the Writ presently except the Demandant can that confesse and avoid: but by all the lust ces, Iointenancy, of parcell shall not abate all the Writ, although the Demandant be of an intire thing, as of a Mannor, but otherwise of nontes nure, because the Writ ought to have a forspis there: *Contra* of Iointenancy, and holden that because Iointenancy was pleaded after voucher and Bar, it is preposterous and shall not be regarded: And the last seisen in a Formedon or in a Writ of Right shall not abate the Writ, as in a *Mord. Ayell*, &c. which are Ancestrall, possellary, for in a Formedon the gift, and not the seisen of the ancestor is the title, and it is not within the statute of limitation 32. H. 8. to be brought of seisen within 50 yeares, *ideo*, &c. And after Iudgement that the Voucher shall stand, and to recover seisen of that whereof the Fine is pleaded, and before the Iointenancy discussed, the Tenant prayed that he might remove the Record upon a Writ of Error, but the Court would not depart with the Record till the intire matter was discussed, for then they should proceed without warrant: also the Writ of Error is, *quod si Iudicium inde redditum sit*, & inde imports the intire demand.

292.

819. A Coppyholder in fee had Issue two daughters by severall venters, and died, the daughters entred, and the eldest died without admittance, yet holden *posse*.

(*es. fratris*, which shall make heir collaterall here inherit, so the custody committed to a Guardian during the minority, although the eldest son died before admittance, it is *posseff. fratris*.)

830. The King presented (*ratione temporal. dum Eveschery*) a Prebend, and after repealed his Presentment, notwithstanding the Clerk is instituted and installed by the Dean and Chapter, guardians of the Spiritualties, during the vacation: after the King reciting *quod fuit canonice institut.* ratified the Presentment; after the Bishop is created, and the Incumbent dies, and holden that the King shall have the presentation now, for by reason of his repeal the Church was not full before, then if the presentment is void, the Confirmation is also void; but a common person may not revoke his presentment. *Quere* in the case of the King *supra*, if it needs to be averred that the Guardians of the Spiritualties had notice of the Repeal.

831. Upon a *Diem Clausit extremum*, tenure of the King is found, but by what services they are ignorant, upon that a *melius inquir.* issued: upon that it was found that the tenure was of a subject, the opinion of the Court was, that the first office needs not to be traversed, but it is void by the sence of the Statute 2. and 3. *Ed. 6. cap. 8.* and the *melius inquirend.* is in the nature of the first *Diem Clausit Extremum*.

832. The parish of *Hurst* extended into two Counties, *viz.* into *Barkshire* and *Wiltshire*, one let his close called *Callis* in the parish of *Hurst*, in the County of *Barkshire*, where the close was in the County of *Wiltshire*, yet adjudged a good Lease: and it is not like where a man let his house in the Parish of *Saint Buttolphs* without *Algate*, late in the tenure of *R.* where he had no such house there, but in *Saint Buttolphs* without *Aldersgate*, the Lease is there void, for they are two distinct Parishes, and the house had no other name but by the Parish which is mistaken.

Tertio-

Tertio decimo Elisabethæ. 293. Mich.

833. A Patron presented a meere Lay person, the Ordinary refused him, he needs not to give notice to the Patron, for it is notorious, he is not capable, but if he refuse because of crininosity or inability, he behoves to give notice: But if the Lay man be admitted, instituted and inducted, that is a plenarty, and the Church is full, for he is Incumbent *in facto*, and behoveth to be an adnullation *per* sentence, before a new Presentment, and of that the Ordinary shall give notice as of a resignation, and other avoidances, where the Bishop is privy or party. Adjudged also that Bastardy and perjury are causes of refusall, but exception was taken to the pleading, because the Incumbent said *actio non* before he shewed who was *possessor*, for otherwise *per Stat. 35. Ed. 3.* he is not able to plead in Bar.

294.

834. Goodman gave, granted, and rendred to *Ed. 6. totum Præbend. suam de Cory, & terras, & possessiones, & omnem autoritat' & potestat' &c. dist. Præbend' spectant. &c.* and over for the interest and right of the Prebend, *ut decet subjecio & submitto, &c.* Harper & Weston held it was a resignat. and so other Iustices: but the Civilians held that the resignation ought to be by words *renunciare, cedere, or dimittere*, and that *resignare* is not an apt word, *Dyer contra*, but Harper and Weston held at the first, that the King although supream he may not take a resignation, without notice given to the Patron, for so it were a wrong to the Patron, *si, &c.* yet after Iudgement was given with their assent according.

835. The Commissary of the Bishop of London committed the administrat' *per* poll, and gave oath to the Administrat. and made entry of the same in his Register, the Administrat. sold the goods and died, and a new Administrat. to whom was committed by letters

ters of Administrat^r and he sued for the goods, and issue joyned, *si Episc. Land. commisit Administrat. &c.* found *non commisit*, so that for default of pleading the matter came not in question, it was doubted if the committing *per word* is a sufficient warrant.

295.

836. In debt upon an Obligation the Defendant pleaded the conditions performed, and upon a certain point they are at Issue, and before triall knowing the verdict would go against him, he conveyed his lands to others upon condition of payment of 20 pounds, &c. and took the profits continually, and the Plaintiff sued an *Elegit* to have the moiety of that land, and the Sheriffe returned that he and the Jury upon finding this are in doubt, if the land shall be extended, and prayed the discretion of the Iustices, *vide* there more cases and Statutes to prove it liable.

837. A *Capias ad satisfact.* upon *restitutum*, is returned *non est inventus*, upon that an Exigent issued into a foreign County: *per opin.* it is an error, for it ought to have resorted to the first County, and ought to have another *Capias* returnable there, and upon that an Exigent.

838. Two Closes adjoyned, the one being by prescription bound to fence, the owner of one, purchased the other, and suffered the hedges to decay, and dyed, having two daughters his heires, who made Partition. *Quere* if the prescription for the inclosure be revived 11.H.7.25. the like of a Gutter.

296.

839. A Merchant went over the Sea to be free from the Lawes and government of the Realm, and not for Merchandise, and that without license, and by the greater opinion he shall not be punished without a prohibition, or *ne exeat regnum*, *vide* now Stat. 13. Eliz.

840. Upon an indictment of murder, Stanley was found

found Culpable, and after the wife of him who was killed, entred an appeale. the Defendant pleaded that shee had taken another husband at *Exeter*, so *depend' per an.* After it was removed by *certiorare*, and the prisoner demand. *quamobrem* he shall not have Judgement of death, he pleaded that there was an appeale hanging, but upon no such Record pleaded by the Kings Attorney, it appeared the sute was discontinued, and after the woman was nonsute, upon Judgement was given that he shall be hanged.

841. A Father in consideration of the Marriage of his youngest son, promised to the friends of the woman, by word, that after his death, and the death of his wife, the son should have the land in Fee, and no use was altered by this bare promise, and so adjudged.

842. A man conveyed *Capite* land to his Bastard son, by act executed, and died, office found, but not that he is a Bastard, nor son to the donor. 1. It was holden that the third part shall not be in ward, for a Bastard is not within 32.H.8. for it shall be the lawfull generation. 2. But the Kings Attourney may supply the defect of the office by averment, that he is son of the Donor; for it is but a supplyment, and not repugnant.

297.

842. A man Condemned in the Exchequer for a debt to the Queen was committed to the Fleet, and after was condemned in the Kings Bench upon a Bill in Debt, at the sute of a subject, and he was brought into the same Bank *per Corpus cum causa*, and by them is committed again to the Fleet, as also for the Debt of the subject. The Gaoler *per* the commandment of the Treasurer and Chancellor of the Exchequer, suffered the prisoner to goe into his Countrey, with a Keeper, for to collect and get his Debts to pay the Queen; The subject brought a Debt upon the escape, but holden that

that it lies not, for the Kings Bench had no authority to commit him to the Fleet, for the Marshalsey is their proper prison, and so the Prisoner was never in Execution for the party, for, &c. But if he had, yet the Execution for the subject begins not till the Queen be satisfied; For she may not have a subject a companion in the interest of the body of any; But if he had been in Execution, no Commandment although of the Queen her selfe, without Writ, is sufficient warrant to discharge the Keeper *per totius Justices*.

298.

843. Putnam made a Lease to his youngest brother, who acknowledged a statute, with Defeasance of performing the Covenants, the Conusee sued Execution, and the Lessee sued an *Audita Querela*, shewing the Defeasance, and that he had performed all the Covenants, as he could shew, upon that Proccesse issued, and the Conusee shewed the Indenture, and the breach of one, and prayed that he might proceed to the Execution, and upon that they are at Issue, which is found for the Conusee. And it was alledged in arrest of Judgement, that here is no sufficient Declaration by the Plaintiffe in the *Audita querela*, and an insufficient Declaration is not aided by the statute 32. of Jeofailes. But after Judgement was given that the Conusee may proceed to Execution.

Hill.

854. The patticular tenant writ to the Grantee of the Reversion by Fine, before the ingrossing of the Fine, and after the Queens silver was payed; *que le conusor mesne nayment* that he is joyous to have so good an heire, and holden a good Attournment.

845. If the Subjects of the King levy War, they are not enemies, but traytors and Rebels: He which is over sea at the time of the Rebellion, and after there succors a rebell who did fly thither, and knowing it, is a Traytor

Traytor with 25. *Ed. 3. per 4. Justices against 4.*

846. The Conspiracy of *Stor*, he being beyond sea, he practised with a Forreigne Prince to invade the Realme. Also he practised the destruction of the Queen. And it was holden that both are Treason, and tryable by 35. *H. 8.* which is yet in force obstant^r the repeale, *M.* and the Clause 1. & 2. *P. & M.* that tryals of Treason shall be according to the Common Law, and not otherwise.

299.

847. Tenant in *Capite* made a Feoffment to the use of his Feoffees and their heirs, till the Feoffor pay a 100. pounds, to him or his heirs, and then to the use of the Feoffor and his heirs, the Feoffee died, his heire within age, the 100 pounds is payed to the heire, and office found, and *per Monst. de droit*, the hands of the King amoved, and of the mean issues after the payment, And holden although this heir was in ward, it shall now be divested, and the King shall not have the value of his Mariage upon tender of marriage to him, for all mean Contingents are removed, which happen in the mean time, so upon a Condition performed.

Pass.

848. The Executors of the Conusee of a statute sued Execution, upon which Writ, the death of the Conusor is retourned, and also an inquisition of the Extent of the Mannor of *B.* of which he was seised the day of the Recognizance, and holden that the Executors, or the Executor of this Executor, if he received no profit of *B.* he may have a re-Extent, although librate executed, for it behoves that the estate be found, for he not being dead, as is retourned, no estate is lyable to the Execution but Fee, and not Tayle, nor for life.

849. *Evileigh* made title in a *Quare impedit* by the Grant of the next presentation by one who had two parts

parts of the Advowson appendant to the Mannor of D. and a stranger which had the 3. appen^d to the Mannor of S. he needs not to shew, how the Torns of the Grantor begun, because being appendant it is apparant it is by prescription, and so adjudged. The Court was that the avowson pertained to the Mannor of the Grantor *ad presentand' 2. vicibus, & quod advocat' pertin'* to the Mannor of a stranger to present the third time. Dyer, it should have been that he was seised of the parts of an Advowson; and the other of the other part of the advowson, for it is but one advowson and one Church. Notwithstanding by him *per stat. 36. Ed. 3. cap. 15.* the Court having substance, it shall not abate for torme.

850. Tenant in *Capite* of a Mannor in Chivalry before the stat. of *quia emptores*, made a feoffment of parcell of the Demesns, without saying any more, the Feoffee made a Feoffment over, to hold of his Feoffor *per 10. sh.* for all services, this land is not holden in *capite* cleerly, and the fi st Mesnalty is holden of the Feoffor as of his Mannor by Knights service.

857. Debt for Damages recovered, the Defendant said, that the Plaintiffe had an *E. legit* served, but spoke not of the return. And it seems good, for his election of the Execution is of record.

300.

852. Issue was joyned *quod T. west Miles dominus Delaware non dimisit*, in verity he is now *Dominus*, but at the time of the demise was but a Knight, yet it seems by 3. Justices that the dignity is parcell of the Issue, so that it may not be found with him who pleaded his Lease.

853. Suggestion to have a Writ to the Coroners ought to be a principall Challenge, and not for favour, and in *Ejectione firma*, it is no principal Challenge, that the Sheriffe is Cousin to the Lessör, or that he is Master of the Bayliffe who made Conufance in *Replegre*, 9. H. 7. 22.

854. The

854. The Advowson of an Hospitall of St. Katherine is append' to the Mannor of B. the Hospitall being void, the Queen Granted *Manerium ac omnes advocat' cum pertinent'* the present presentation shall not passe.

855. In Debt upon an Obligation, the Defendant after hearing of the same, imparted, and now pleaded tender at the day and place, and none there to receive, and now ready, and said not at all times, and a good Plea, for he had excused the Forfeiture by the Plea, and he shall not be estopped by the imparlance to plead now ready.

856. Story Indicted of Treason Committed at *Antwerp*, said upon his arraignment, that he is a subject of the King of *Spain*, and would not answer to the Ind & went; But because he was openly known to be born in *England*, because he would not plead otherwise, Judgement of Treason was given against him. *Quere* by *Callyne*, if a Spaniard commit Treason over the sea against our King, if he came into our Realm, if he shall be indicted and arraigned of that.

857. A Feoffment to the use of himselfe; and after his decease to the use of *Alice*, who he intended to marry, till the Issue which he shall beget of her be of the age of 21. yeets, and after the son comes to that age, then to the use of his said wife during her widowhood, the husband died without issue, adjudged that the woman shall returne, for there the estate is good, although he never have a son. And if a Feoffment be made to one and his heires untill l. s. pay a 100. pounds, if l. s. dies, the Feoffee shall hold *in perpetuum*.

Trin. 302.

858. *Plus de cas Cheney devant fol. 201.* Now the vendees of *Cheney* being duely Barred in a Writ of Entry *sur disseisin*, and in Attaint, they brought a Writ of Right, where *Parramour* the tenant chose tryall by Battell, and the Lists of the Champions being all prepared, the

the Plaintiff being remanded was nonsure, and so final judgement given against him.

859. *Elisabeth* wife of *Vyvin* had two sons born in espousalls, both named *John*, the eldest being reputed by the father to be begotten by one *Mayo*, and by him and others called *John Mayo*, the wife of *Vyvin* died, after the Earl of *Devon* died without issue. Office found that *John Vyvin* son of *Elisabeth* was coheir to the Earl, upon that *John* the youngest sued livery with the other coheirs, and held Courts, and recovered Rents, and after *John* the eldest, released, gave and granted all his right, interest and demand, in all the Mannors, &c. to *John* the youngest, and after that the Tenants payed their rents to *John* the youngest as before; It was holden that this *John* who is heire indeed, shall be intended so by office, and that neither the common reputation, nor the meaning of the Inquest shall be otherwise averred. 2. Also that the suing of Livery, holding of Courts, nor yet receipt of the Rents, had gained him any possession, either *per wrong* or by right, upon the release may inure. It words of gift and grant shall passe the reversion, yet that payment as before by the Tenants not knowing of the Grant, is no Attournment. *Plowd.* would have the gift and Grant inure *pro fraterno amore* to raise an use to the youngest. Also he moved, that *John* the youngest by name of *John Vyvin* had levied a Fine, *per* which the eldest shall be intended Conusor and estopped. *Quare* of those to the purpose.

so 860. Forgery of a Testament by which any Lease for years is devised, is within 5. *Eliz.* by the word writing, for there is not expresse mention of a Testament, but of a will concerning Franktenement in the statute. *Quare* if perjury in Court Christian about *probare* be punishable in the Star Chamber *per* the proviso of the Act of 5. *Eliz.*

303.

861. The Coppinghold of an Ideot is not within the survey of the Court of Wards, but it shall be ordered in the Court of the Lord of the Manior as to that.

862. Office found by Commission of *Mandamus* out of the Church at *Westminster* of Lands in *Chester* is not good, but the Commission shall be out of the Chancery there, and of Lands in *England* and *Ireland*, there ought to be severall liveries, and severall Seals.

Quarto decimo Elisabethæ Mich.

863. The Office of the Aulneger, *viz.* *ulnator pannorum*, may not be granted by the King without warrant of the Treasurer. *Quere* if the King put in a clause of *non obstant. Stat. vide* the Statutes of that matter 17. *Rich.* 2. 5. 1. *H. 4.* 13. 4. *H. 4.* 18. 31. *H. 6.* 5. 17. *Ed. 4.* 5. 9. *H. 4.* 2. 2. *Ed. 3.* 15. 27. *Ed. 3.* 4. 31. *H. 8.* 15.

304.

864. A man devised two parts of his Land to his foure youngest sons in tail, and if the infant in the belly of his mother be a son, that he shall have the fifth part, as coheire with the fourth, and if the fifth die without issue, that the two parts shall revert, the father died, the son is born, and after he and three other of the said sons died, by *Sander*, *Dyer*, *Bendlo* and *Mead*, the infant in the belly of the mother shall take nothing, because he was not capable when the Devise took effect, *whiddon contra*, and holden that none of the two parts shall revert till the five sons are dead without issue.

865. *Grevill* pleaded a forged acquittance in Bar of a statute of 600 pound, for payment of 300 pound, after in the *Star Chamber* he is convict of the Forgerie, damages double the penalty, and not of the 300 pound shall bee assessed by *Stat. 5. Eliz.* for the Plaintiffe ought to have recovered the penalty, and by the release he is so much damnified.

866.

866. In an *Ejectione firme* of the Lease of a Rectorie verdict passed for the Plaintiff. And in arrest of judgement it was alledged it was not shewn that the person was in life; but because that was averred by implication *viz. and scitu* yet it is in *Dominico* in the Court, the Plaintiff had Judgement.

867. Tenant in Tayl made a Lease for years rendring 20 shillings rent, and after released 19 shillings and died, and the issue accepted, 12 d. if he may distrain for the 19 shillings more, was the question, *Sanders* and *Catlyn* held he might not, *Dyer* and *Whiddon contra*, but cleer if the Lessor had granted after the lease, that the Lessee shall hold without impeachment of wast, that it had not been good.

868. The next avoidance is granted to 3 *habend' its & uni eorum conjunctim & divisim*, the first presents the third, who is admitted, instituted, and inducted, and adjudged well, but if the Bishop had refused his sole presentment, peradventure he might have failed in his *Quare impedit*, for the severance of the *habend. supra* is void in law as it seems. *Simile* 21. Ed. 4. 18.

869. Tenant of the King in *focage in Capite* made a feoffment and retook to him and his wife for life, the remainder to his son and heire, and the husband and wife died, the son of full age, *Quere* if he shall sue livery by the first branch of 32.

870. An indictment was that the *defend' ex malitia premeditata felonice percussit A.* whereof the eighth day after he died, and there were no words *Murdravit*, holden *per Curiam* that but homicide which was pardoned *per* the generall pardon.

305.

871 *Ejectione firme* and counted of the Demise of 300 acres of land *per nomen Manerii*, *habend. Maner. & cetera premis. virtute cuius in Manerium & cetera premis. intravit, &c.* It had been better to say in the said

Q. 2

said three hundred Acres, he entred, yet very good, and the word *Manerium* is surplusage.

872. A man gives to me all his trees, and after he himself cuts and I them carry, and he brings a Trespass, I may plead as to the cutting *non culpable*, and justify the residue. *Quere* if the first plea goes not to all.

873. *Luke* Merchant of *Ireland* was obliged in eighty pounds to one *D.* of *London*, the Obligation was made in *Ireland*, but all times remained in *London*. *D.* died intestate in the County of *Bedford* in *England*, the Bishop in *Ireland* committed the Administration to the son of *D.* and he released. The Archbishop of *Canterbury* committed the Administration in *England* to the wife of *D.* who had the Obligation, *supra*, and recovered upon that, for the Administration shall bee committed in the place *per* the Ordinary, where the Obligation is at the death of the intestate, and not where the Debt began, for it is not local.

874. Trespass by the husband and wife of the Lands of the wife whilest she was sole, and the writ was *ad grave damnum ipsorum*, and the Count was with *continuando usque diem brevis* of depasture. *Quere.*

875. A Writ issued to the Bishop upon Issue in Dower, to certify if ever accoupled in lawfull matrimony, he certified the espousalls to be of the age of twelve yeares of the husband, and 16 of the wife, and the Bishop was amerced for the return, for he ought to return the lawfullnesse of the marriage which is triable by the Spirituall Iudge.

876. A man pleaded never Executor, and gave evidence

vidence of Administration by Letters of Administration, and well, yet he might have pleaded that in abatement of the Writ, which named him Executor. *Quere.*

877. *Puttenham* condemned *per default* in a *Scire facias* in the Chancery upon a Recognizance there, the Court commanded the Guardian of the *Fleet* where *Puttenham* was in ward, for other causes, for him to detain in Execution for the Condemn. *supra.* the Guardian took Recognizance of *Puttenham* to save him harmless against every one, and suffered him to escape, the Conusee sued the Guardian for the escape, who imparled and sued *Puttenham* upon his Recognizance: Issue *non dampnis.* The Iustices held he was not damnified for three Causes,

1. Because the *Capias* lies not for Execution upon Recogniz. because not in the Originall, but hee shall have a *Fieri facias* or an *Elegit.*

2. Because *Puttenham* came not in upon *Habeas corpus*, nor was recorded by the Court, nor opposed if he be of the same person before hee was awarded into Execution.

3. Also it was not *ad petic. petent.* whereas peradventure hee would choose another manner of Execution. It was agreed if the Plaintiffe had brought the Originall of Debt that he might have an Execution by *Capias*, but he shall not have an *Elegit* there, but of Lands which the Conusor had the day of the Iudgement given, whereas in a *Scire facias*, he shall have those things which he had *die Recognit. &c.* it was admitted *supra*, and by the Originall brought against the Guardian, and imparlance that he was dampnified.

878. It was found upon a *Melius inquirendo* tenure
Q3 of

of the Queen as of the Mannor, &c. but by what service, they were ignorant, it shall be intended service in Chivalry as of a Mannor, for stat. 2. Ed. 6. cap. 8. excludes onely tenure in *Capite* per such intertain office.

879. The Queen granted the Ward of the body of A. who died at full age, and no tender of Marriage made, the land shall not be returned in the Court of Wards upon the prayer of the party, for it was his folly.

307.

880. *Fines* lost a Hawke, and I. S. found it, and sold it to A. and he gave it to Sir John Spencer, who sold that over, and though he knew the Hawke, he is not chargeable with an action upon the case for Trover; And the Plaintiffe ought to count expressly that he is tame and reclaimed, But by *Southcote*, the words that he was possessed, *ut de Bonis propriis*, import so much.

Hill.

881. A Statute was acknowledged 26. day of May, the Confess made release bearing date the 25. day of all demands *usque confectiorem present*, and delivered the same first upon the 27. day, the statute is discharged, for the day of the delivery is the day of the making. But if the Words had been *usque datum present* the statute had not been discharged.

308.

882. In action upon the case against one in the Kings Bench in the Custody of the Marshallley, who pleaded to the Issue, which is found against him to the damage of 450. pound, after he confessed himself debtor to the Queen in the Exchequer; upon which he was committed in Execution to the Fleet, and now Judgement is given in the Kings Bench, and by *Habeas Corp*, the Prisoner was brought into the Kings Bench, and the Warden of the Fleet discharged, and the Prisoner committed for both Executions to the Marshallley. The Exch^q

Excheq' Writ to the Marshall, *ad Habend' corp'* by *Prerogati'*. *Quere*, if he be bound to obey.

883. A Termor of a house for 40. yeers devised the house to *I.S.* without limiting any estate, the Devisee shall have the intire terme, for he may not have for life, nor at will, nor for lesser terme of yeers, *per opin' Cur'*.

884. Lessee for 99. yeers, made a Lease for 40. yeers, rendring rent, the Lessee for 40. yeers made a Lease for 15. yeers, rendring rent, the Lessee also for 40. yeers, granted, all which is in him to the Lessee for 99. yeers, the Lessee for 15. yeers would not atturue, nor pay rent. *Quere Broughtons Case.*

Pas.

885. A woman seised of Land by discent from her father, suffered a recovery 6.H.8. to her own use in Fee, and after by Indenture between her and *A.* willed and granted that after mariage (which she intended with the said *A.*) that the recoverers shall be seised to the use of her, and of *A.* and their heirs, the mariage tooke effect, and the Feoffees executed estate according; After the husband and wife by Indenture made between them and the next heire of the part of the mother of the *feme* reentring, that the land was inheritable by her, on the part of her father, and that shee had no issue of her body; and that she was deceived in the first Judgement, for shee intended alwayes that for default of issue of her body, that the heires of the part of the father should have the land, upon the husband and wife concluded and agreed, to be seised to the use of themselves in speciall tayle, the remainder to the right heires of the wife, and the husband covenant if the wife died without issue, that he would execute estate to himselfe for life, the remainder to the use of the heirs of the wife, and the wife died without issue the 27. is made, the husband died without executing an estate, and yet holden that the heire of the wife shall have the land,

Q 4

and

and nor the heire of the husband, and that *per omnes Just.* For the Correction of the limitation of the use, in which the wife was deceived, was lawfull; And the consideration in the last Indenture of the husband and wife, was sufficient to raise an use of the intire land to the heires of the wife, because the land moved from the *feme*, and it was for advancement of the *l. ac* from whence the land descended.

886. *Cobham* Indicted of Piracy stood mute, and had judgement of pain, fort, and dures, the Parliament pardon'd all contempts, paines and Executions, &c. and excepted Pyracies. If he may be newly indicted of the same Pyracie; there were divers opinions of that, for it is no Judgement for the Piracy, but for the Contempt, But holden that he may be indicted of another Piracy committed at the same time, or before, so that it is no Conviction.

887. The *Lo. Paget* levied a Fine as that &c. of land holden in *Capite* in Chivalrie, in which rendered to himselfe for life, the remainder to his eldest son, and his heir Males, remainder to the youngest and his heir males, the remainder to the right heirs of the *Lo. Paget*, and died; The eldest son entred, and at full age sued livery of the third part upon 32. because a disposition for advancement of his children, and after that, he payed the value of the 3. part in possession, and for the remainders to the right heirs sued livery, as he who had a remainder by descent from his father, and payed the value of the Moytie of the Remainder in Fee, according to the usuall rate, after he had issue a daughter, and died without issue male, the daughter in Gard for the remainder to the right heirs; the second brother entred for his remainder in tayle, the daughter died without issue, the youngest brother being her heir. *Plowden* it seems he ought not to sue livery of the 3. part, as the eldest son did, because the statute is satisfied for live
one

livery for the injurie for fault of Wardship, and the statute extends not when there is many issues advanced one after another, that every one ought to sue livery, one after another, but once for all: *Quere* for they Compounded as to that point, and as to the remainder to the right heires, the youngest brother sued livery, for though he took as heir to his father, for which his eldest brother had sued Livery, and not as heire to his Neece, for such a remainder may not be *possess. fratris*, for default of possession, yet because the Kings tenant is dead, and another in by descent, the Queen shall have her Duty, adjudge *vide* 40. Ed. 3. 9. *Proposit de Beverleys Case*, and 15. Ed. 4. 10. *Skyreens Case*.

309.

888. *winters Case*, a Leale of three Mannors, rendering for one 6. pounds, for another 5. pounds, for the third 10. pounds, with Condition of reentry for non-payment, the Lessor granted the reversion of one Messuage, and the Lessee attorned, after the Lessor bargained and sold the Reversion of all, and the Lessee attorned, and Rent in one Mannor is behind, the Grantee may not enter. A three questions were here, 1. If they are severall rents, and three held they were, but *Dyer contra*; because the reversion is intire, and the rent accessory. 2. If the Bargainee of the reversion be Grantee within stat. 32. H. 8. to take advantage of a Condition, And they held all but *Mounson* that he is. 3. If the Bargainee of parcell of the reversion shall have benefit of the Condition, and upon that, adjudged not; And holden that the reversion within 32. ought to be expectant, upon a terme of Franktenement, and not upon taylor; And also a Grantee of the intire estate in Reversion as was in the Lessor himselfe. *vide Kidwells Case* in the pleading of it.

310.

889. A Reversion upon a terme is granted to the use of the Grantor for life; after his discease to the use of his Executors and Assignes, for terme of 21. yeers, the remainder over in taylor, the Grantor is attaint of Treason, and died intestate, and without assignment, and holden that the Queen shall have the terme as forfeit, for it was an Interest in the Grantor, and may well stand in himselfe in expectancy, notwithstanding his estate for life, and if the Executors shall take by it, they have it not as Purchasors to their own use, but shall have it as Assets.

890. Three were obliged *per words Obligamus nos & utrumq; nostrum per se & pro toto, & in solido*, two of them went, sued and pleaded *non est factum*, it was found against them, and in arrest of Judgement, it was said, that one or all shall be sued, and not two, but it appeared not to the Court, by the Roll, which was *quod querens protulit script' predict' quod debuit. &c.* witness that three were obliged, upon that Judgement was given for the Plaintiffe.

891. Keite devised Gavelkind land to Harrison in writing, and after revoked his Will by word in that point, and adjudged a good revocation. And where Harrison was hanged for the Murther of Keite and his son had entred by the Custome of Gavelkind, *viz.* the father to the bough, the son to the plough, this entry was not lawfull.

311.

892. In a *Mortdancest'* if tenant of the land, or tenant by the Warranty plead Bar, *viz.* matter of Record, Release, Collaterall warranty, &c. and it passe against the tenant, it is peremptory, But if he pleads in abatement of the Writ or Voucher, which is Counterplead, and found against him, there the 3. points shall be over inquired, *viz.* if the ancestor died seised, if the Demandant

dant is next heire, and if the ancestor died within 50 years, and those ought also to be found for the Demandant, otherwise he shall not recover, and it seems if issue be joyned on one of the three points, and found against the Tenant, that yet the two others shall be inquired 9. Afsi, 3 accord, though 33. Ed.3. & 27. H.8. the *opin.* of Fitzh. be contrary, and that the others shall be holden not denied, and that he is Barred. But that is not so, because he said not *quod assisa non.*

212.

893 A man bargained and sold a Mannour with an Advowson *append* in Fee, to have to the use of the Bargainee and his heires in such manner as after in these indentures is covenant' and covenanted to suffer a recovery, to the use of the Indenture rendring Rent, to the Bargainer and his heires, with distresse, & *nomine pæne*, and moreover for further security, it was concluded that the Bargainer and Bargainee shall levy a Fine upon grant of the land to the Bargainee with render of Rent to the Bargainer, provided that the Bargainee shall regrant the Advowson to the Bargainer for life, and also covenanted that all estates after to be made should be to these uses. The recovery was suffered, and a Fine levied, but variant from the Covenant, the Bargainee died before regrant of the Advowson, 1. It was holden that the *proviso*, though it be placed among the Covenants, yet it was a condition to defeat all the Bargaine and sale. 2. That the regrant shall be upon request, but yet in the life of the Bargainee, for that his death is a breach of the condition. But Dyer held that for want of conveyance within six months, the condition was broken, and it is not like to a Feoffment where livery is to be made; and if so, then the Fine, (for it was levied after the 6 months) conveys this again to the vendee absolutely. 3. Although the Fine
vary

vary from the Covenants, yet by the generall covenants that all estates after to be made shall be to the said uses, the condition shall be well preserved, so the Rent. And it is there holden that render of a Fine, which implies consideration, may be averred by writing to be to the use and so also may a gift in tail: and a gift in tail made by a woman to a man, rendring rent by writing, may be averred *causa Matrimonii prælocuti*.

Trin.

894. A writ of Entry in *te quibus* against *A.* and *B.* found was that *A.* disseised and not *B.* yet judgement shall be given of the intire, and not of the moiety onely against *A.* and the Plaintiffe in *misericordia* against *B.*

895. Trespasse upon the Statute that none shall distrain the beasts of the plough, so long as other reasonable distresse may be had, and declared of taking *contra formam Statuti*, and shewed not specially how he had other Distresse, yet it is adjudged good, and implied in the words, *contra formam Statuti*, and it shall come of the part of the Defend^r after he hath shewed the cause of the distresse: He shall also shew that there was no other distresse, adjudged 4.E. 3.1. & per Ed. 2. that a Tenant shall have that action against the Lord, although he had made agreement for the thing for which the distresse was taken, and the issue was joyned here *quod defend. non cepit nec imparcavit contra formam Statuti*.

896. *Cestui que use* in tail, the remainder in tail after 27 tenant in tayl in possession levied a Fine and died without issue, a stranger in the name of the Feoffees or survivor of them, without naming any of them, entred within the 5 years, for to revive the use to him in remainder. *Quere* if well.

897. Vpon Statut. 21.H.8, a Clerk one time qualified as a Chaplain to a Baron, although his Master die, or that he departs his service, he shall not lose his plurality

rality. If a Chaplain allowed by the Statute take two Benefices, and sue not a dispensation of the Metropolitan, yet he shall not forfeit the Plurality; for the statute is, that he may sue a Dispensation, and not that he ought. Also, if a Lo. allow by his letters Testimoniall 6. to be his Chaplains, where he ought to have but 3. the first three shall be his Chaplains.

898. A Lease for 20. years to 3, after two of them took a new Lease for 30. years, to begin after the 20 years, or immediatly after the death of their Companion, if he die within the 20. years, and he died within 3. years; *Quare* if it be in the election of the two, to begin their second Lease, or not, till the 20. years expired.

899. In Avowry for Rent Charge, the Defendant said that the Grantor was seised in Fee, &c. The Plaintiff said that the Grantor was his father, and seised in taylor, &c. it seems he shall traverse the Fee.

213.

900. A Seigniorie and tenure *de obite* and Chancery land, is extinct *per possession* of the King *per stat. 1. Ed. 6.* notwithstanding the savings of the Statute, but the Rent remains distrainable, and the Lo. shall avow upon the matter, but not upon the person, as within his Fee and Seignory.

901. In Dower issue was never coupled in lawfull Matrimony, the Bishop certified, that the woman at 16. years, and the man at 10. years, the Marriage was solemnized at such a place, & *sic legitim' matrimon' copulat'*, and holden no answer to the Writ, in point of the Writ, and a new Writ issued to the Bishop.

902. The Lo. Powes conveyed land in *capite*, to one Gray his Bastard in remainder after his own death: The Lo. Powes died, holden by Dyer and Sanders, that the Bastard shall not sue Livery, for the 3. part, for he

is

314.

903. Lessee covenanted at his proper charges, and after cut trees upon the Land, and in waft pleaded that the house by tempest, &c. and that he cut to repair, &c. the Lessor replied by Covenant. *Quere, vide 40. Ed. 3. 6. 21. H. 6. 50. 12. H. 8. 1.*

waft by Clere gainst Haddon Comment.

904. A Fine was levied by A. to the use of B. for life, the remainder to E in tayl, the remainder in fee to B. provided if B. pay 100 pound, that he shall have tail and fee expectant, upon payment the use is transferred.

905. A recovery was suffered to the intent that the recoverers should perform his will, and said not his last wil, after he made Declaration of the uses by Indenture, yet he may alter them, for his will, and last will are all one.

315.

906. The Lord *Cromwells* Case, a Lord of the Parliament shall not be impanelled without speciall commandement of the King, or that their presence be of necessity.

907. Errour, Trespasse supposed in *D. iuxta 3.* where in English it is called beside S. yet good, and the Defend' taken *pro fine*, omitted in the judgement, and well, because the Defendant a Bishop, and a *Capias* lies not against him. *Quere* if the omission de *miseri-cordia* ore *contra*, which is onely for the King, shall make all the judgement void to the party 29. *Assise.*

908. A *Scire facias* in the Chancery to have execution upon Recog. the Defendant pleaded a deselance which was dated before the Recognizance, but it was first delivered afterward, and was not received, but the execution awarded, upon which he brought an Error in

in the King's Bench, and reversed the Judgement. Note, yet both Courts are *coram Rege*.

909. In a *Formedon* in reverter or remainder, the Demand. need not alledge seisen within 50 years upon Stat. 32. nor in a *Scire facias* to execute a fine of such nature, for they shall come in upon traverse of the part of the tenant as in avowry, viz. not selsed of the services after the limitation

Quinto decimo Elizabethæ. 316. Mich.

910. A *Formedon* against the husband and wife, who after summons and essoin, levied a fine to a stranger, and after the husband made default, upon the wife prayed to be received, the Demandant Counterpleaded the receipt by the fine, and proved that the land is not the right of the wife, yet by judgement she was received, for the right shall be intended that which was at the purchasing of the Writ.

911. The husband made a feoffment to the use of himself and his wife for life, the remainder, &c. the husband sowed the land and died, the wife shall have Crop, and not the Executors of the husband, because the wife was joint purchaser with her husband, contrary it had been if a remainder had been limited to the wife. And if the husband sow the land of the wife, and the wife die, the husband shall have the Crop, so shall Tenant for anothers life, if *Cestuy que vie* die. And if the husband sow land and die, and the third part is assigned to the wife for dower she shall have the emblements, because *de optima posses.* of the husband per 5. *contra. 4.*

912. A Juror was challenged, because hee had nothing within the hundred, at the day of the *Venire facias* returned, and it appeared that he had at the day of the Distresse, but *Harper* and the Clerks held that he shall be sworn, because the Challenge is in the present tense, *quod nihil habet*, &c. Dyer held that the entry of that shall

shall be referred to the day of the Pannell, the third part of which shall be Hundreders. But if he had at the time of the Pannell, and yet had not at the time of the distresse, yet he shall be sworn, for his notice is not altered, and by Common intendment upon the summons upon the *Venire facias*, hee ought to take notice.

Quere.

913. A Commoner because of Vicinage, may not put in his beasts immediatly in the drift into the other soyle, but it behoves they stray thither, being put in his own soyle. 13. H. 7. 10. lib. Ent. 567. *Contra.*

317.

914. Land in Gavelkind is demised to the eldest son upon Condition that hee shall pay 100. pounds to the wife of the Devisor, he failed of payment, *Quere* by *Manwood*, if the youngest may enter in the Moytie, as by implied limitation.

915. If a man be Outlawed in *London*, Judgement is not given by the Coroner, which is the Mayor, but by the Recorder by the Custome; And if the Exigent be not returned, the Outlawry is not pleadable in disability of the person, notwithstanding upon writtessesse Processe issues to the Sheriffe, (and not to the Coroners according to the Custome) who certifie that, and it is sufficient for the Queen, but not for the party.

916. By *Dyer*, *Mounson* and *Manwood* Justices, a Joynture may be upon Condition, viz. to performe the last Will of the husband, or so long as shee shall live sole or unmarried, and that shall be a Bar in Dower, and although it be a remainder after the death of her husband it is a good Joynture. And by *Dyer* an estate in Fee is a good Joynture within the words stat. 27. H. 8. viz. for the life of the wife or otherwise, and may be so averred, if there be not expresse words in the Conveyance to the contrary.

917. *Haw-*

917. Hawley brought an Action upon the Case against Sydnam for words, viz. hee is infected with the Robbery and Murther lately committed, and smells of the Murther, and it lieth for the words infected, and Hawley had Judgement and 300. pounds damages.

318.

918. Two had Closes adjoining, the one from time, &c. had alwayes been bound to inclose, and now for insufficiency of the Inclosure, the beasts of the other escaped in, and immediately before they were driven out, they were distrained for Rent. But because it was but by a Termor, who had granted part of his terme, rendring rent; and besides no default in the owner, It was adjudged that the distresse was unlawfull, But it seems liable to the distresse of the Lo. if hee did not make fresh sute.

919. The Earl of Kent being reputed but an Esquire, brought a Writ of Entry by the name of Esquire, and the Pannell was returned, and now by the Herolds he is declared to be an Earle, and he challenged the array, because no Knight returned, &c. and not allowed, because no default in the Sheriffe. The Jury was upon Habeas Corp' with proviso, in default of the Demandant, and yet the Tales shall not be granted at the sute of the tenant, before some default be again shewed in the Demandant, for the proviso ought to be *quando duo brevia sunt in eodem gradu & qualitate*.

920. A man was obliged to performe Covenants contained in an Indenture of a Lease of tithes; and there was a Proviso in the Lease, that if the Lessee attempt and prosecute an action against A. who pretended a former Lease, if Verdict passe against the Lessee, that the rent shall cease. In debt upon the Obligation for not payment of the rent, it is no plea, that A. injoyed the tithes by vertue of his former Lease; so that the Defendant could not have according to his Lease, and so no

R

article

article *ex parte sua per implead per Curiam*, for the Rent is payable till the Verdict passe against the Defendant.

319.

921. A man bargained and sold land, provided that the Bargainor shall have and retain for 20. yeers, without interruption. The Bargainee disturbed the possession of the Bargainor within the 20. yeers. *Quære* if the intire estate of the Bargainee be defeated, or that the proviso be but a reservation, grant or agreement.

Challenge in a Formedon *per Vernon* against *Manners* Comment?

922. *Capite* land is extended upon a Statute, the tenant died, the heire within age, the dying seised is found by office, but not the title of the Conusee. *Quære* if he shall answer of the profits to the King, or hold them *per stat* 2.Ed.6.

923. Two Executors brought an action of Debt, the one is Summoned and seivered, yet he may release before Judgement. But after Judgement he may not acknowledge satisfaction, because he is not privy to the Judgement.

924. Queen *Mary* had Rent of 20.pounds out of land, whereof the husband and wife are Joyntenants, and gave, granted, Remised, released and renounced the rent, to the husband and his heirs, the husband Devised the rent, and well by *Dyer*, and that shall be a Declaration of the election of the husband, to have the Deed inure as a grant, and not by way of extinguishment. *Quære* if he had not made election, if his heire might, and that the Patentee shall have election to use his Patent, as to him seems best. 9.H.6.

320.

925. In a trespassse upon the case against the Lady *Browne*, for the divided part of the course of water, which ran from, &c. to the house of the Plaintiffe, and

it

it appeared that the Diversion was of a main pipe, but of which the Husband of the Lady, made a quill with a Cock to serve his house in his life, and because it is with a Cock, so that upon every opening of the Cock is a new diversion, the action lies against the Lady; but Judgement was longer stayed, because the Plaintiffe did not shew, that he was seised of the house to which, &c. at the time of the Diversion; *sed cum existat, &c.* and after Errour brought.

926. In an *Ejectione Firme*, the Defendant prayed aide of the Queen, because the reversion after the terme which he claimed was to the Queen, *per* the At-tainter of the Earle of Northumberland, and was granted. And in the Chancery the Defendant prayed Serch for the Queen. And after long argument agreed, that he shall not have serch, for no damages shall be to the Queen; And it had not been seen that serch should be in aide prayer, but onely in Petition of right, upon that a *procedendo* granted, *sed non ad Judic' Regina. in-consult.*

Hill. 321.

927. The Grandfather, Father, and two Daughters were, the Grandfath. levied a Fine as that, &c. in *Chester*, and that with render to himself for life, the remainder to the Father, and the heires Males, the remainder to the eldest Daughter in tayle, remainder, &c. the Grandfather died, and the Father died without issue Male, the eldest Daughter entred, the youngest in her own name, and in the name of her eldest Sister as Cousins and heires to the Grandfather, pursued a Writ of Error, out of the Chancery, retournable in the Kings Bench, to revers the Fine (the Writ was directed to the Justices, and not *Camario Cestrie nota*) which was returned with the Record, and the eldest Daughter came not, upon that she was summoned and severed, and a *Scire facias* issued against the heire of the

Conufee to heare the Errours (note where he had nothing in the land) and none againſt the tenant, And the Errors were aſſigned. 1. for default of entry and non-payment of the Queens ſilver in the Roll, but it appeared upon the back of the Writ of Covenant, what was aſſeſſed. 2. Becauſe the Concord is not ſigned by the Juſtices who took the Conuſance, according to the courſe in the Banck, where the Conuſance is taken out of Court. 3. For default of Entry of a note of the Fine, which is uſuall in the Common Bank, and remains with the Chirographer before the ingroſſing. But as to that, one of the parts of the Chirographe remained amongſt the Records, as the uſe is there, and no other Foot of the Fine there, as remains here with the *Cuſtos breuium* upon the back of which the Proclamations are entted. And it was moved that a writ of error ſhould firſt be brought in *cheſter*, But it was not to be ſo for there are errors in their Charters excepted. But the Plaintiffe ought to bring his writ there at the next County, where they may ſee the writ, and proceed and reverse if there be error apparent, or affirme it, it upon a *ſcire facias* returned the Defendant doe not appeare, without receiving Plea of Releaſe. And if the Defendant be grieved he may have a ſpeciall writ to remove both Records unto the Kings Bench; It was holden that the Plaintiffe ought to have a *ſcire facias* againſt the land tenant, for otherwiſe if he had judgment *quod reſtituat*, he may not have execution, for if the tenant be outed without being Garniſhed, he ſhall have an Aſſiſe. Alſo it may be the Defendant had a releaſe to plead, which would be an eaſe to the Court of the examination of errors, upon that a *ſcire facias* was awarded againſt the elder Siſter as land tenant, who appeared, but ſaid nothing to the errors aſſigned. The heire of the Conuſee of the Fine before rejoyned to the errors alleged diminution, upon that proceſſe

was

was awarded to the Justices of *Chester*, who returned that all was certified, and after the heire of the Co-
nufsee rejoyned to the Errours assigned, *In nullo est
erratum*, and upon surmise of the Plaintiffe a *Mand.*
was awarded *Camerario de Chestria* to make a writ to the
Sheriffe, there to garnish the land Tenant *ad audiend.
errores si, &c.* Another time it was directed to the
Justices of *Chester*. After the Fine was affirmed
good.

928. Tenant for life by Fine granted all his estate
to *A.* and his heires, the Grantee died, the heire im-
pleaded in a *Præcipe*, prayed aid and might not have it,
because but an occupant.

323.

929. The Lord *Cromwell* avowed Distresse for breaking
of a Bylaw made by the Homage of his Manor of *A.* as
they may by the custome *pro meliori ordinat. averiorum
cum opus erit*, which was that he which put in his beasts
into the certain Common before pulsation of a Field,
&c. should forfeit 10 shillings, and shewed that the
Defendant Tenant there, and one of the Homage had
broken, and that the Lord had used to distrain the
beasts of the offender in any place of the Manor, &c.
Adjudged a good Iustification. It is not shewed that
the breach was presented, nor that it was needfull, nor
that it was *pro meliori ordinatione, &c.*

930. *Whitacres* brought a Debt against the Guardi-
an of the *Fleet* of an escape in the life of the Testator,
and adjudged that it lies not, for the offence is but a
Trespasse, which dies with the person, and by the
Common law Debt lies not against a Guardian, but an
action upon the case, till 1 *Rich.2.12.* which gave a
Debt against the Guardian, and it speaks not of the
heire nor Executor, but if there be a Recovery in the
life of the Guardian, so that it be reduced to certainty,
&c. *contra.*

R 3

323.

223. Pas.

931. *Taverner* was sued in the *Star-chamber*; for forging a customary, for usage of *Coppyholds*, which tended to the disinheritor of the Lord, and put divers Seals to it, and adjudged Forgery within 5. *Elix.* by the word writing, the Damages were levied by English Bill to the Sheriffe, and by four Justices the Queen may pardon the corporall punishment which is but in example, but 3 held contrary without a release of the party.

932. *Linguu* made a Feoffment to his own use, and after devised that the Feoffees should be seised to the use of his daughter *A.* who in verity was a Bastard, that is not a good devise of the Land by the intention, for by no possibility may they be seised to her use; and a man will that his Feoffees shall give in tail, that is a good devise of the Land.

933. *Per nomen omnium hereditament. (situat. iacent. & existent. in D.* the Advowson of the vicarage passed, for although the Advowson be not visible nor palpable, nor lies not in Livery, yet in *Droit* the Advowson the Church shall be put in view, so that it had a being in the town and Church.

934. He which was convicted for three Mases, forfeits but 100 pound upon the Statute 1 *Elix. vide verba Statuti.*

324.

935. The under Marshall took an Obligation of one in Execution, and a stranger, to save him harmlesse of escapes, and let the Prisoner at large, and although the Statute 23. *H. 6.* toucheth onely the Sheriff, Guardians of the Fleet, and Palace, and ministers of the Sheriffs, the opinion was, that the Obligation was void, and the written Statute is, that the Sheriffe nor none of the officers, and not of his officers as it is printed, also it seems the Condition is against land, and then the Obligation is void by the Common Law.

636. A

936. A Termer covenanted for him and his Executors to repair and sustain a house at his own charges, *principali matre meo (in leso vel in decasu pro defectu reparac* or otherwise in default of the Lessee or his Executors) onely excepted, and died, the house is burnt in default of the Executors, and adjudged that a covenant lies against them, and dammages recovered of the goods of the Testator, and not conditionall, if they had not of their proper goods, and this was upon great advise. ment.

937. Tenant for life, the remainder in tail, the tenant for life levied a Fine, as that, &c. to the use of himself in Fee, which is a forfeiture, after tenant for life, and he in remainder joynd in a Feoffment by Letrer of Attorney, it is a discontinuance of the tail, for first it was entry for the forfeiture, and then the Feoffment of he in remainder, and not a confirmation of Lessee for life.

938. Tenant effoined after issue joynd in a reall plea.

325. *Trim.*

The Lord Audleys Case abridged before. 1 *Eliz. fol.* 166.

939. Sir William Say seised of land, and having issue two daughters, made a gift in tail to the eldest, the remainder to his own right heires, and died, that daughter entred and is attaint of treason 31. H. 8. by Parliament, & it was enacted that she should forfeit, &c. which act saves to strangers their rights, titles, reversions and remainders, and no word of Entry: It was resolved that the Entry of the other daughter for her moiety was congeable upon the Patentee of the King. 1. Because the Act of Parliament had not put the Queen in possession without office. 2. because Statute 33. and 34. and 35. H. 8. for Confirmation of Patents without inquisit, wills that the Patent shal be good against

against the King and his heirs, but it speaks not of subjects, upon which she entred without Petition or monstrance of Right.

940. A writ of estrepment was granted in a *quid Juris clamat* betweene Judgement and Execution.

941. Assise of two acres, the tenant pleaded two severall Barres, and the Plaintiffe made severall titles, and the tenant said the Assise to come upon the title in the singular number, and they found for the one with the Plaintiffe, for the other with the tenant, and Judgement shall be given for one for the Plaintiffe, and shall be Barred for the other onely, notwithstanding his plea in the singular number.

Sexto decimo Elisabethæ. 326.

942. *Huntley* devised a house to a woman, and to the brother of the woman, and to the heirs of every of their bodies, and for default of such Issue of the brother and of the sister, the remainder to the right heirs of the Dev'or, and died; The brother died without issue, the sister had issue and died, the issue shall have a moiety and no more, for it seems the word (every) made severall estates. *Quære* if the right heire shall have in reversion or remainder.

327.

943. The sea left a great quantity of Land upon shore. *Quære* whether the owner next adjoyning or the Queen shall have it.

944. The Queen was leased of *Waddon Chase*, and the Lord *Gray* was Lieutenant there in fee, and he and his Ancestors, and their Keepers, had by Prescription used to hunt vagrant Deere in the

the Demesns of the Mannor of S. adjoyning, as in purlews, the Mannor of S. came into the hands of the Queen, who granted that to *Fortescue* in Fee with a free waven within his Demesns, *Ita quod null' intret in warennam illam ad fugand sine licentia F.* It was holden that the unity doth not extinguish the purlew, and that the clause of *Ita quod*, &c. is not to be extended against the Keeper of the Queen, but other subjects. So that where *Fortescues* servant, killed a servant of the Keepers for chasing there, it is not Justifiable by the Statute of *Malef. in parcis*.

945. If a Chaplain qualified for two benefices, take a third bytriality, *Quere* if the first be void upon the Statute 21.H.8. also *Quere* if the penalty of twenty pound, and profits, incurre but upon the last Benefice, so that the second only remains. Also if the presentation of the King with a false supposall, that the King had title by lapse, where he had not, is void, And if the King present one, and after present another before induction, it without expresse repeal, and recirall of the first accord, Statute 6.H.8. cap.9. if the second shall repeal the first, and if the ordinary not having notice of the repeal, proceed to induction, if the repeal be now of force. The King had the presentation, the Bishop of *Norwich* the Nomination, the Bishop Colated without presentation, and in a *quare impeait* hee pleaded not disturbed. *Quere* of the Plea.

328.

946. A Church void by death, the Patron presented to the Archbishop of *Yorke*, who refused because illiterate, and that was given notice of by intimation fixed at the Church dore, and after the six months presented by lapse, the Patron brought a *Quare impedidit*. First it was resolved that the six months shall be accompted from the death of the incumbent and not from the notice, But if the Church be void by resignar,

nat. or deprivation, it shall be accounted from the notice, Also holden that the notice after this manner is not sufficient, except the Patron inhabited in a foreign Country, so that he cannot easily be found, also that the issue may be joyned upon the ability, and that shall be tryed by the Archbishop of *Canterbury* Primate of all *England*, and not by the Deane and Chapter of *York* as *sede vacante*. *Quære* if not so *e converso* if the Bishop of *Canterbury* disturbes, and if the Clerk be dead before issue tried, then it shall be tryed by the Country. After it was found for the Patron that the Clerk was sufficient, and a writ to admit him awarded to the Archbishop of *Canterbury*.

947. *Muntford* let, promising that the lessee shall quietly and peaceably have and enjoy without interruption of any one as a doer of wrong entred, an action upon the case lies upon the promise, and is not like to a warranty for that is against titles and not against wrong. 26.H.8.3.

948. A Receiver of the Queens impleaded in the Common bank for debt, had a Writ of priviledge out of the Exchequer to the Justices of the Bank to cease, because he first ought to satisfy the Queen, but it was disallowed.

949. A lease is made to one, his Executors and Assigns, for the life of another, the lessee made a lease for years rendring rent, to him his Executors and Assigns, and died. *Quære* if the lease for years shall be occupant, and the rent extinct, or that the frank ten. shall revert to the first lessee, and the terme shall be in esse, but it seemeth the rent is gone. *Vide* 38.H.6.4.

950. A Termor devised his terme to his son when he shall come of full age, and in the meane time that his wife shall have the occupation and profits, the wife
 executor

executor sold the terme. *Quere*, what remedy for the son.
329.

951. The Deane and Chapter at *Glocester* made a lease of a great wood rendring rent, with reentry, and by letter of Attourney under their Common Seale, they demanded at an open place of the Wood, the Lessee made tender at another place; Issue shall be taken upon the demand in the most open place. But for rent payable out of land issue shall be of the tender in the most open place.

952. Upon submission by obligation, it was Arbitrated that the one shall pay to the other twenty shillings for six yeers towards the finding of *A.* An action of debt is brought upon the obligation, and default assigned in the nonpayment of the twenty shillings in the fourth year, and shewed not that *A.* is in life, and yet adjudged good for it shall come in on the other part. Also the Annuity is not determined by the death of *A.* being a Grant for six yeers, and is a duty to the obligee himself towards the, &c.

953. A writ of false Judgement upon a Recovery upon an action upon the case, and after the Record was removed the Plantiffe was nonsure, a *scire facias* issued to have execution of the damages, for the Record shall not be remand.

954. *Talis tenet dimid^o feodi Mil^o vocat. Bacon in London de bared. que tenet ultra de Rege* this shall be intended in Chancery per *waite* of a Knights Fee.

955. A man intitle himself as devisee of the intire land by the Statute 33. H.8. although he shewed not the tenure, yet it is very good, for that shall come of the other party, and *prima facie* it shall be intended Socage, because the greatest part of the land in the Kingdome is so: *Tamen Sanders contra.*

330.

956. Before 27.H.8. *Cessi que use in taile*, the remainder

mainder in taile, the remainder to the first in Fee, 'he made a Feoffment to the use of himself for life, the remainder to his eldest Son and Wife for life, and after their decease, the remand' to the uses of their bodies in remand', &c. 27. is made the Father died, so that the eldest Son and his Wife are seised of estates taile executed. If the Feoffees may enter and revive the ancient use in taile in the Son: But it was agreed they must not for two causes. First because Statute of 1 R. 3. the Feoffees are bound by the Feoffment of *cestuy que use*. Secondly because the Son came in by his own acceptance, and by the Statute, and he is not remitted to the ancient use.

957. An *Essoyne* was entred in the Roll in Common Bank, but not in the *Essoyne* Roll, and upon that it was adjudged Error, And the Plantiffe in Error of policy alleged diminution of the Record in that point, and had a *Certiorare* directed to the Chief Justice of the Common place, to certifie if he had any such *Essoyne*, for if he certified that he had not, then his adversary shall not allege diminution in that point, although he had caused the *Essoyne* to be entred in this term. Admission of a Gardian or next friend, is without any *talis po. lo. suo*, for it is the act of the Court.

958. *Avowry* for Fealty and ten shillings rent, and sure, and alleged seisin within fifty yeers, the Plantiffe said that he held by fealty twelve pence and suit *absque hoc*, &c. found that the seisen of the rent, but not of the *fiducie*, 'he shall not have judgment, for all is in the affirmative, Traverse is not found *D. Quere* if it shall not be after fifty yeers. *Quere* if the seisen of the rent be not seisen of the other services also.

331.

959. *Clache* devised a house to *Alice* his eldest daughter and her heires, and if she die having no issue, then

to *Thomasin* his youngest daughter and her heires, and other lands he devised to *Thomasin* his daughter and her heires of greater value, and if she die within sixteen yeers, that *A.* shall have her part to her and her heires, and if *A.* marry such an one, that *Thomasin* shall have her part to her and her heires, and if *Thomasin* die having no issue, that all her part shall goe to two others which were Nieces, and if *Alice* die without issue, that *Thomasin* shall have her part, to her and her heires, *Thomasin* after sixteen yeers died without issue, and it was adjudged that *Alice* shall not have her part but the Nieces, for notwithstanding the crosse limitations, it appears that the intent was not, that *Alice* shall have by *Thomasin*, if she survives sixteen, for as it appears he bore more affection to *Thomasin*, and besides the words so import, and when his intent is expressed it shall not be taken by implication.

Dyer said that so there is no estate tayle in the case but see upon limitation, but two held *contra*.

Hill.

960. A man devised that after debts and legacies paid, that his wife shall have the residue to distribute for the soul of the testator, and made his wife executor and died, she took another husband who made executor and died, against which she brought a *Detinue* for the goods of the first husband, and adjudged that it lies, for she shall not have the goods as legatory but a executor to distribute, &c.

961. The Statute. 34. H. 8: cap. 21. of misnomer shall not aide non nomen.

332.

962. The Conuser of a Statute infeoffed *A. B.* and of severall lands, the land of *A.* is extended
and

and he brought an *audita querela* against B. to have contribution, he pleaded in abatement the omission of the lands in possession C. *sed non allotatur*, for the Plaintiff is not bound to take notice of that, but every one grieved may have an *audita querela*, but upon a Statute Staple the course is to have an *Audita querela* to the Chancellour, but upon a Statute Merchant it shall be directed to the Iustices of the Bank.

Pass.

963. A woman conspired with her servant to kill her husband, which he did in her absence, it is petty treason in the woman being accessary, because petty treason in the servant, contrary if the conspiracy had been with a stranger, *vide Mist. Sand. Cases.*

964. Wast was assigned in the cutting 10 trees, the Detendant as to three justified, for that he employed them in six posts, *ad separand. separalia clausa ibidem*; and sayd not *quot clausa*, and alleged not that by prescription there was such a kind of inclosure there, nor that all the three Oaks were there so employed, nor that the inclosure is made indeed, upon which it is adjudged against the Defendant, and to the seven he justified, because they were dry, hollow, and putrified in the top, *non* being sufficient *macremiam pro edificis*; *Mounson & Harper*, it seems the plea is insufficient; but *Dyer* held *contra*, because it amounts to that which is usual in Presidences, *viz.* that they were dead, not bearing fruit, *neque folia in estate. Sed quod non fuit suffic. macremiam*, it is not to the purpose, for it may be otherwise employed.

965. Husband and wife, Donees in speciall rail, the husband is arraint of treason and executed, having issue, the wife dies, the issue shall not have the Land, for he ought to make his conveyance by both, *per opin. Iustices.*

333.

966. One Citizen sued another in the common-
place for debt upon an Obligation, for which and be-
cause he would not stand to the order of two Aldermen,
he is disfranchised, and because here is no cause to dis-
franchise him, a Writ was awarded to the Mayor to re-
store him.

967. *Chapman* devised his house in which *I.* inhabited
to his three brothers, and the house which *T.* his bro-
ther inhabits to the said brother, and he to pay 10
pound to *Chr.C.* or otherwise to remain to the house,
provided the houses shall not be sold but go to the next
of blood being male, that is an estate tayl, and shall
go to the house, and shall be construed to the most
worthy person of the Family, and being males it shall
be construed in the future time.

334.

968. Tenant in Tail levied a Fine, as that, &c.
and retook in speciall tail to a second wife, the issue
of the first may not averre continuance of possession
against the Fine, which is a Feoffment upon Record
and discontinuance. *Quere* of a Fine with Conu-
sance of Right onely. *vide* the Statute of fines 17.Ed.
1. cap.1.

Trin.

969. A lease for years upon condition that the Les-
see shall not alien to any person without license of
the Lessor, the land, nor any part of that, the Lessor
gave licence to alien part, the Lessee aliened the other
part without license, and adjudged that the Lessor may
enter, notwithstanding the dispensation with the Con-
dition in part.

335.

970. Sir Francis Calthrope 26.H.8. not having any is-
sue by Indenture tripartite between himself and one
Windam, & one *Edward Calthorp* his nephew, covenanted
never

with *Windam* sole, that *Arthur* the son of *Edward*, shall marry the daughter of *Windam* before *Michaelmas*, and *Windam* also covenanted for the daughter, in consideration of which marriage to be had, and other agreements for the said marriage, *Sir Francis* covenanted with *Windam* sole, that he would make an estate to a stranger of so much of his Manor of *Northmorton* as amounted to 40 Marks by the year, to the use of himself for life, the remainder to the use of *Edward* for life, remainder after his decease, & carnall copulation between the said *Arthur* and the daughter of *A. Windam* to their use, and to the use of the heires of *Arthur*, of the body of the daughter, the remainder to *Arthur* in generall tail, the remainder to *Edward* in tail, the remainder to the right heires of *Sir Francis*, and the residue of the said Manor of *N.* to the use of himself for life, and after to the use of *Edward* in taile, the remainder to the use of his own right heires, and covenanted with *Edward* onely to make further assurance within the year, and agreement that the said uses shall not be altered without the assent of *Windam*, for which Covenants and agreements *Edward* covenanted in the same Indenture to pay to *Sir Francis* a 100 Marks, which after he satisfied, and a Fine and recovery was had to the said uses; the marriage took no effect, *Sir Francis* had after issue one son and died, If the sonne being the heire generall shall have the land by descent, or *Edward* shall have by remainder *ut supra*, came in question upon the demurrer, upon that above given in evidence in an *Ejectione firme* brought by the Lessee *Edward*. Note there is no Election shewed by the Feoffees of the part of the Manor of *N.* which amounts to 40 Marks, as it seems there must be, before it can be in *Cestuy que use*. And note although here is money payed in Consanguinity, yet because the principall cause of the entring into this conveyance was the marriage wich took not effect, *Quare* if all be destroyed, *Windam* never

never agreed to alter the uses. Compound.

971. *Humphrysons case*, the use upon a recovery was limited in Latin, made to the use of *H.* he against whom the recovery was had for life, remainder *seniori puero de corp. H.* in tail, &c. After *H.* covenanted by English Indenture to levy a Fine to the use *supra*, where the remainder was to the use of the eldest child of the body of *H.* &c. *H.* had a daughter eldest, and a son youngest, the opinion was, that the daughter shall have the land, for though the word *puero* be indifferent to every sex, and then the male for dignity shall be preferred, yet the English had declared the construction to be to the eldest child.

972. A disseisor of land in three severall towns *A.* *B.* and *C.* he levied a Fine of that in *A.* the disseisee within five years made a Letter of Attorney, to enter in all the three, the Attorney entred in *B.* and *C.* in name of all, *per Curiam* it is not an Entry of that in *A.* for the Conusee had there distinct Franktenement by title, and for every franktenement, a severall Entry is needfull. 9.H.7.25.

973. A Parson 28.H.8. made a Lease for life rendering Rent, and that is of Land given to him and his successors to find lights, &c. the Rent was employed till Statut. Ed.6. after the Statute the successor accepted the Rent; the opinion of the Court was, that the patentee of the King may enter upon the Lessee as the successor might have done before the statute, if he had not accepted the Rent, the acceptance *supra* was void, as to the affirming of the Lease, for he had no reversion at the time, it seems that the acceptance before the statute by any successor shall bind the Patentee by the saving in the Act.

338.

974. *Cook, Wotton, and Darnet* purchased jointly in fee, and every of them covenanted with the other, and
§
his

his heires and Assignes, & *utrique eorum*, to make such conveyance, to the other heires, who should first die, as they shall devise, D. & W. died, the heir of W. devised an Indenture of bargain and sale, and tendred to C. to seal and deliver; And C. he required time to confer with his counsell, upon which W. brought an Action of Covenant, as heire, and recovered 200 pounds damages. Note a Covenant lies for the heir where it is not annexed to the Land, and also that the Covenantor is bound peremptorily upon request to seal, and *utrique* is as severall as *alteri*.

975. In a franchise where a Lord had Waifs, a thief waived sheep which before the Lord kiled, they strayed into another liberty, where the Lord had Estrayes: *Gerrard* held that they appertain to the first Lord, and that the property was in him as it should be in the King, upon the Waiver without lesse; *Callin*, it is in the King by Prerogative without lesse, but the Prerogative is not grantable over for that.

Decimo septimo Elisabethæ. Mich.

976. An Infant which was Plainiffe by his next friend and now at full age made an Attorney and is nonsute, he shall be ramerced, *contra* if he had continued within age.

339.

977. At the *Nisi Prius* 12 Jurors appeared, but no hundredor, and 4 were challenged, and upon a *tales de circumst.* 4 hundredors returned, and joyned with the residue, and it passed for the Plaintiffe. *Quære* if it be a lawfull tryall according to 35.H.8. Cap.6.

978. The Prebend of *Salisbury* made a Lease, for 70 yeares, the Bishop, Dean, and Chapter confirmed, (the Bishop being Patron and Ordinary) *quoad* 51 yeares & *non ultra*, the Demise and all that is in the Indenture, adjudged good for 51 yeares, and *Quære* except for all.

979. Tenant for life, the remainder for life, the remainder in tail, the remainder in Fee to the remainder for life, Tenant for life, and he in remainder for life joyned in a Feoffment by deed, *per Curiam* he in remainder in tayl may enter for forfeiture of both their estates, for he in remainder joyning, is *particeps criminis*. If the Tenant for life himself had made a Feoffment he in remainder for life, might not enter, because he had not estate of inheritance.

980. One had a common appendant in a great waste, the Lord improved parcell of the waste, and after infeofed the Commoner of that which he improved, it is no extinguishment of the Common.

Hill.

981. A woman and her husband, as Administrators of the first husband, recovered a Debt, while that sure was depending, the son of the intestate by Coven between him and the Defendant, procured new Letters of Administration to him and his mother jointly, and after judgement released to the Debtor: The husband and wife sued Execution, the Debtor brought an *Audita querela*, hanging which the second Administrator was repealed *per sentence*, and the Coven and the repeal pleaded in Bar, upon which the Defendant demur, and against the Defendant.

982. The Ordinary collated *A.* to the Vicarage of *Tat-*
ton, after two years where, the title of the lapse was come to the King, after the King presented *B.* who brought a *Quare impedit* against the Bishop and Incumbent, upon refusal to admit him, hanging which, *A.* procured another Presentment in the name of the Queen without mention of the first, and adjudged no revocation of the first, *vide Statute 6. H.8. cap. 15.* that where a Patent is *ad bene placitum Regis*, the second Patens ought to rent the first, and that the will is determined.

340.

983. After Statute 27. H. 8. a man made a feoffment to the use of *Alice* his wife for life, and if she dies leaving the husband, then to the use of the husband and such wife as he shal after marry, for life for her joynture, The remainder over to a stranger, and after with privacy and assent of the Feoffee, he in remainder joynd with the Feoffees in a feoffment, by letter of Attourney, to new uses, and after the Feoffee leaved a fine according; the first wife died, the husband took another wife and died, and five yeers after the fine, the second wife by commandment of the first Feoffees entred to revive the first use. *Mounson* and *Harper* said, that the entry is lawfull without possession, or commandment of the Feoffees, which had nothing therein, but the future use is in the custody of the Law, and 27 H. 8. hath given the possession to the use, and so the feoffment of the Feoffees void; But if they had right or title in the land, their feoffment had given it, *per Mounson*, It was the Lady *Umptons* case, That a Feoffment of he in reversion, and livery in absence of the Tenant for life will passe the Fee; *Manwood* and *Dyer* held that the use is drown'd, for the second Feoffees had not their possession for any such confidence, for they have not notice, and the feoffment had taken away the entry of the first Feoffees, where their entry ought to execute the dormant use; And although the Statute concern the Franktenement and Fee, yet they have a mean interest in regard of the dormant use, the which is conveyd by the Feoffment, and it is no injury to the woman which was then unknown. *Dyer* said, the second wife shall not take in joynture, nor otherwise, for she was not in esse when the particular estate ended, by the death of the first wife.

341.

But all the Justices held the contrary, for there is a difference

difference between an use and possession; Also Dyer thought that the remaind^r after the death of the husband, is no joynture, but it shall be an estate in the life of the husband. *Quere* accord.

Pass.

984. A Formedon against husband and wife, the husband made default, the wife refused and vouched, the demand^r counterplead^t the voucher in parcell for joynture with her husband, *non allocat^r*, for the default of the husband shall not prejudice her, and it shall be intended by the undivided moyties; And to another parcell because the Vouchee nor his Ancestors had nothing after the title of the Demandant, except joyntly with A. and B. who are in full life & *non allocat^r* because he ought to alledge by name that the Vouchee or his Ancestors were joynt-tenants, and aver the continuance of the Joynture and survivor, for otherwise he acknowledgeth the possession whereof he may make a Feoffment: And the Demandant did counterplead in another parcell, because the husband and wife have leaved a fine, as that he hanging the Writ *non allocat^r* for he is stopped by his using his Writ against them, to say they are not Tenants; But if he will counterplea^t, it should be in the place and Garranty, because she shall not have in value if she had nothing in the land demanded.

985. The Statute 27. H. 8. of Suppressing, is, that Leases made by Governours within a yeer of the Statute, by which the houses are decayed, shall be void, and there are affirmative words, that Leases with the ancient Rent shall be good, A Lease was made within fourty seven dayes of the statute, for threescore yeers, without reserving the ancient Rent, and holden that is shall not be intended Covenous without expresse averment of the Covin, for it may be *bona fide*. And the affirmative words shall not be intended, and no other.

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Also peradventure the value was decayed.

342.

986. Four Letters for the inception of the four first words in a Patent of the King, were interlessed and space left for them, viz. *H.R.F. & H.* yet it was adjudged a good Patent, for its for the honor of the King, and it is usuall in many Patents, that after they may be depict or limmed with gold.

Trim.

987. A man having two daughters by divers venters, he demised the moiety of his land to his wife for seven years, and that the eldest daughter ought to enter in the other moiety, at the day of her marriage, and if his wife be with child with a daughter, that she shall have an equall portion with the other sisters, and he died, the wife entered and had no daughter, the eldest daughter took a husband and entered in the moiety, the youngest daughter died without issue, the seven years expired, adjudged that the collateral heire of the youngest shall have the moiety of all, and not of the moiety only by liberty of Entry Devised to the eldest, the property is not devised, but occupation for a time, for the minority of the youngest, and it appeared that his intent was that every daughter shall have equall advancement.

343.

988. The Earl of *Arundell* granted a Mannor to the Earl of *Northumberland* in tail, the remainder in tail, upon Condition that they, nor neither of them, the Mannor or any part thereof, shall alien, discontinue, or do any thing in any manner, or permit directly or indirectly, but that without impediment it may and shall revert, if they die without issues: The Earl of *Northumberland* took wife, also he granted the reversion of a Copdyhold according to the Custome, and after he committed treason, and after he is attaint of that

that by outlawry, and died without issue, the Coppelholder in possession died, the Earl of *Arundell* entred into the Manor, upon which the Grantee in reversion entred into the Coppelhold land, and the Lord of *Arundell* brought a Trespasse, and the opinion of the Justices that it lies not.

1. By all besides *Geffreys* the taking of the wife although her Dower may hinder the immediate reverting, yet it is no breach of the condition, for if there had been an expresse condition that the donee shall not tak wife, or that his wife shall not be indowed, it shall be repugnant to the estate and void, and besides, because the wife may not enter in her Dower without assignment, that shall revert absolutely without impediment.

2. Also by the better opinion the reverting is not hindred by the reversion granted of the Coppelhold, for the Coppelholder is but Tenant at will according, &c. so that the Frank tenement may revert, but peradventure an expresse condition that he shall grant a Coppelhold, in reversion he would be restrained, &c. But the generall condition here as it seems, because the condition shall be taken strictly, it shall not comprehend, a private Custome upon the land hath not an eye, warrants of Land in Burrough English shall bind the heire at the Common Law onely; so the heir at the Common law, shall take advantage of the Condition.

344.

3. Also the Treason committed without Attainter is no cause of entry, for the Condition, and when the attainter came as it seems *per melior. opin.* it is no breach of the Condition. for the *quo minus reverti debet & possit*, had mitigated the precedent words of the Condition, for otherwise if it had been an impediment to the descent, to the issues, it shall be a breach of the

Condition, but the *quo minus*, &c. it shall mitigate that if it may revert as it should, for the King had estate but during the issues, and then it may revert immediately with Petition or sure, as the Lord Barkleys Case is that his Entry was adjudged congeable upon the failing of the Issue male of the body of H. 7. But all agreed, that although there be a Cause of Entry for some of the matters, and yet the Grantee of the Reversion of the Coppyhold shall retain, for it is a thing incident to the Custome of the Manors, which the Lord for the time may grant, &c.

Decimo octavo Elisabethæ. Mich.

989. In debt upon an Obligation against the daughters and heire of Henningham upon the Obligation of their father, the Plaintiffe recovered upon *nihil dicit* and Judgement generall, and upon a *Scire facias* to have Execution the Defend. pleaded nothing by descent in Fee, at the day of the first Writ purchased, nor after; But the Opinion was, that after recovery *per nihil dicit*, *non sum informat.* or confession, the heire shall come too late to plead nothing by descent, &c. But he ought at the first to plead that, or shew the certainty *quant.* &c. And by Dyer, that if the profits received after the death of the Ancestor till the Writ purchased, are sufficient to satisfie the Debt, that the Plaintiffe shall have a generall Judgement against the heire: *Manwood contra*, and the Judgement *supra* shall be speciall *lib. Intrac.* 151. Debt against the Executors of the heire without averment the assets descended to the heire, for it shall not be intended, if the contrary be not shewed.

345.

990. A man granted a Rent Charge without words *pro se & hered.* and died, the Grantee brought an annuity against the heire, and after discontinued his sure,
and

and distrained, and well adjudged, because the election to make that an annuity is determined by the death of the father.

991. It was found by office that tenure which was holden of the Queen, as of her principality of Wales, by service to go into the Warres of the Prince, at the Charge of the Prince, and *per Curiam*, it is not tenure in Capite.

992. Thorntons Case, it was decreed that a Bastard to whom the mother conveyed the intire Chivalry land by aſt executed, It is not a Child advanced within 32. yet certain syde.

993. A quarter of a year is 91 dayes, half a year 182. a year 365. and to the 6 hours the Law had not regard.

*Ter centum, ter viginti cem quinque diebus,
Sex horas neque plus, integer annus habet.*

346.

994. Vpon Error in Chester the Writ shall be directed to the Judge there out of the Chancery at Westminster, returnable in the Kingsbench; and they themselves may reform that without defend. present. and make restitution, or award a *Scire facias* against him if he will, but if hee affirm the first Judgement, all shall be removed, and if it be found erroneous they shall forfeit a hundred pound.

995. *Quare impedit* by Bacon Tenus that if an Incumbent be deprived for not reading articles (according to 23. Eliz.) that the Ordinary shall give notice to the Patron, Intimation that comprehends that the Incumbent had not read the articles and subscribed, it is not sufficient; But hee ought to say late Incumbent, and he is bound to shew that he ought to subscribe, and that he is deprived for default of that, also the Limitation is *omnibus*, &c. where speciall notice ought to bee given to the Patron;

Patron, and it is not sufficient to have the intimation read at the Church doore, and in pulpit, but it shall be speciall notice given to the person of the Patron for that.

347.

996. A *Subpœna* 1. Out of the Common Bank against *Waller*, upon information exhibited against him there for usury, *contra formam Statuti*. 2. There is no mention what Statute 3. that by the Attorney pleaded non-culpable, and was found against him, and Judgement gave according, for the Statute of *Je sailes*, which speaks of misconveyance of proceſſe, and misjoyning issue.

997. A Condition of an Obligation was, that if the Obliger before *Mich.* make a Lease for 31 years, if *A.* will assent, and if he will not assent then for 21 years that the Obligation shall be void, *A.* would not assent, the Lease for 21 years ought to be made before *Michaelmas*.

348.

998. *Westons* Case, If the first benefice became void by acceptance of another *per 21. H. 8.* for although *Weston* had a dispensation from the Pope, that was made void by the statute, and though after dispensation be purchased of the Queen within the Act of the statute, 28. H. 8. yet the party shall not be restored without a new presentment, notwithstanding the said stat. 28. made the Bulls of the Pope good for one year, and that if within the year surrender them, that the Chancellor of the augmentation may make a dispensation to them *per Mounson & Manwood* But *Dyer contra*, for by him as 21. made the benefice void, so the 28. restores it again, and both stand if it may be, *Tenus* if the Queen had two titles, to preserve one as Patron, and another by lapse, and granted the Fee of the Avowson of the Church, being void, and spake not of the Presentment.

ment *hac vice*, he himself shall present. And if the King had title to present by lapse, or, &c. and he presented, and the Clerk is instituted and admitted, and dies before induction, the King shall present again.

Quare, Otherwise it is in the Case, of a subject: and the Queen after institution and before induction may revoke her presentation. And it was adjudged in the Exchequer chamber, that if the Church be void *per* resignation or upon 21. H.8. for that no notice is given to the Patron although the lapse incurres to the Queen, she shall not present, for then the Prerogative shall do wrong.

999. A man devised Lands in London, to two upon condition to pay Rent to his wife at four Feasts of the year, and if the heir be behind, by 40 dayes being demand^d that it shall be lawfull for the woman to distrain and holden that if the Rent be behind, the wife may not distrain till it be demanded, and yet the heir of the husband may enter for condition broken, although the wife never made demand, and as to that they are bound at their peril to pay. And holden that the subsequent words of distresse doth not qualifie the Condition, but ioynly both penalties for the non payment.

349.

1000. An appeal of the death of a brother against I. S. of M. &c. as principall, and one F. as principal, whereas the name of the principall was T. S. the accessory appeared, and pleaded no such *in verum natura* as I. S. the day of the writ purchased nor never after. The two chief Justices held that although there be another I. S. in another County, if there be not in the same where the Town of M. is. Or if they be dead before the writ purchased, the plea is good: and holden there that in favour of life a man may traverse the return of the Sheriff.

1001.

1001. The Conusee of a Statute took a Fine of the Land of the Conusor to another use, it is not discharged of the Execution, for the Statute 27. had a saving of elder rights, &c. which the Feoffees have, or may have.

Pass.

1002. Lands in the hands of an Abbot, and of the Farmers of an Abbot, were time beyond memory. &c. charged but of tithe of Lamb and Wooll, and now the Parson sued to have tythe hay, and grain, prohibition lies by the Statute 31. H.8. per the parolls discharged in the Statute Parson *Pekirke's Case*.

1003. A. Tenant in Tail, the remainder to B. and C. in tail, A. discontinued and died without issue, B. brought a Formedon in remainder of the Moity, the Writ was, that after the death of A. B. and C. to the Demand. *Filio & Hæred.* B. remaind. &c. *eo quod A. obiit sine Hæred. de corp.* and well without mention in the *eo quod* in the death of C. for the clause of *eo quod* is used alwayes to determine the former Tail, and for the estate for life that is employed sufficiently determined per the words *quæ post mortem*, &c.

350.

1004. A man let 10 acres parcell of a Manour for 10 years rendring Rent, and after let his Manour for 20 years to begin at Michael. and the Lessee for 10 years never returned, the 10 years expired, the Lessee of the Mannour had 10 acres during his terme, because the Franktenement and the Fee abides parcell alway.

1005. Upon recovery in a *Quare impedit* a Writ to admit the Clerk was directed to the Gardian of the Spiritualties, which is not returnable before it is executed, the Bishop is created, it was doubted if their authority cease, But it seems upon the suggestion of the matter

matter *supra*, the Plaintiffe may have another Writ to the Bishop returnable if he will.

1006. A man obliged to two in 200. pound, to bee payed 100. pound to one, and 100. pound to the other; the one died, *Quare*, if the survivor, or the executor of the other shall have his 100. pound.

1007. A man devised land to his two daughters in tail, they by word made partition, the one died, *per Curiam*, the other shall have the intire: Peradventure of a terme, partition may be made by words.

351.

1008. The Rectory of West Bodin ought to come to *Edw. 6.* per attaindor of Felony, to which the advowson of the Vicarage was appendant, and was concealed, the Queen granted the Rectory & *omnia hereditamenta. parcel. spectant. vel pertin. diste. Rectorie*; and because the Patent was *in tam amplius modo & forma quam* the Felon had it. Also there are words *ex certa scientia, &c.* so that the Queen is not deceived; Adjudged that the advowson passeth without speciall naming: and so it was moved that some books are, that by an usurpation the King shall be out of possession, and put to his *droit* of advowson; But 35. H. 8. is cleer that the Queen may gain possession, *per* presentment and plenarty six moneths, against an infant which is a purchaser.

Trin.

1009. A man which held by Herriot Custome of divers Lords, he made a fraudulent gift of 20. horses, one of the Lords brought a debt for him and the Queen, for the value of 20. horses, upon the Statute 13. *Eliz. Dyer* and *Harper* held it was maintainable, but *Manwood* contrary; For the other Lords are grieved, and the statute shall not be construed to aid one onely concerning his grief. *Quare* if the Lords may joyn in an action.

1010. Husband

1010. Husband and wife tenants in speciall tail, the husband onely levied a Fine to his own use, and devised the land to his wife for life, the remainder over rendering Rent, the husband died, the wife entered and payed the Rent and died. The Issue is Barred for 2 causes, first by the Fine which had Barred his conveyance and the entail. 2. By the remitter waived by the mother.

392.

1011. The Chaplain of the Arch-Bish. of *Canterbury* having a Benefice of the gift of the Queen, he procured a dispensation of the Arch-Bishop of *Canterbury* to have a triality, the Queen confirmed the dispensation with a *non obstante in aliquo statuto*, the Chaplain took two others, the first adjudged void by the Statute 21.H.8. vide 1. and 2. P. & M. 25.H.8. and 1. Eliz.

1012. An Abbot made a Lease to another Abbot for 60 years, the Lessee and his Coven. made a Lease for 60 years, the reversion came to the Queen, the 60 years expired, the second Lessee surrendered to the Queen *ex intentione* that the Queen would grant to him for 20 years remaining, the Queen citing the Indenture and surrender *ex certa scientia, &c.* granted for 20 years, *Wray, Southcote and Manwood*, held, that the Queen may avoid the Grant because she was deceived, *Dyer contra*, for it is not upon suggestion but consideration, the which is not to the purpose be it true or false.

1013. The custom of granage in *London* is, that the Mayor shal have the 20 part of salt, brought into the Port of *London* by an alien, the alien brought salt, and promised to satisfy Granage, In an Action upon the Case the Plaintiff declared that for so much being the 20 part not satisfied, &c. and yet as well, as if he had said he had not satisfied the 20 part, for it is implied in the words *supra*.

353.

1014. Information was exhibited for intrusion into 15. houses, the Defendant conveyed to himself title by the Letters Patents of H.8. by name of the great Garden, &c. containing in length from the East, &c. 100 feet, and in latitude from, &c. 200 feet. The Attorney of the Queen replied and maintained the information *absque hoc*, that H.8. granted the 15 houses by name of the great Garden containing in length 200 feet (where the Defendant had pleaded the 200 feet in latitude, and he made no mention of the latitude, & *hoc petit quod inquirat*, &c. and upon that they were at issue, and verdict found that H.8. did not grant by name of the great Garden containing in length 200 feet *pro ut Defend. in Barra* allegeth; where it should have been as the Attorney of the Queen had alleged, inasmuch that verdict was found for the Queen and judgement given: and after by error was reversed, for error in the Issue and verdict of more feet then in the plea; And there it is said that it is not formall, that he which traverses *absque hoc*, which is in the negative, should joyn issue first, but ought to be a rejoinder: so that the party affirmative, ought first to joyn issue, *viz. predictus Def. ut prius dicit*, &c. & *de hoc ponit se super patriam*. And there it is a *Quare* it by the Statute of Jeofailes 32. H.8. discontinuance in the Case of the Queen, after verdict be aided.

Decimo nono Elisabethæ. 354. Mich.

1015. Blower being a Lay man without 24 years of age, was instituted and inducted into a Benifice, a stranger sued a citation out of the delegate to deprive him, hanging which one W. brought a *Quare impedit*, and against Blower and the Ordinary, and had judgement by default at the grand distress, &c. and the Bishop brought a writ of descent upon non summons. W. pleaded in Bar to both (which was evill) the deprivation of Blow. *supra*

pra; also holden no plea, for the incumbency was not in question, but the disturbance, for which upon demurrer it was adjudged that the first Judgement shall be void, and the Plaintiffs restored to that which they lost.

1016. A Fine was levied by *Edward Barrows* to one *Anne Barrows* to the uses in an Indenture, where there was a proviso, if *Edward* pay or tender 20 pound during his life at the Fontstone in the Church of *Salisbury* to *Anne*, that it shall be to the use of *Edward* in Fee.

1017. And holden that because the day is not limited that tender shall not be to the purpose, except he give notice to *Anne*, that she or her deputy may be there to receive.

1018. *Cestuy que use* 12. Ed. 4. devised his land in E. to his son and his heirs, provided that if he die without issue, or the issues fail living his Executors, they shall sell the land, *per Curiam*, that is not an estate tail, nor any gift of the land it self, in a Formedon.

1019. A woman covert with her husband, levied a Fine of the land of the wife holden in *Capite*, and that to the use of her Children, And holden by the greater number, that the Wardship is saved by the Statute upon the parties compounded. Notwithstanding. *Plowden* and *Dyer contra*. 1. Because a woman covert is not solely seised. 2. Also a woman covert hath neither power nor will. 3. Also the Statute was made onely for advancement by husbands of their wives, or children, but not *contra*, and such cases rarely happen, for that they are not provided for. As the 11. H. 7. provides not discontinuance by the husband of the land given to him by his wife, and the chief intent of the 32 was, to give a liberty to make a will of land.

Hill.

Hill.

1020. A Termer is ejected, the Lessor may enter every year for to save a discent, or to have an Assise. but shall not recover dammages: by *Beke and Dyer*, if the Lessor be upon the Land, and the Lessee will make a Feoffment, it is no disseisen. *Manwood* and *array* contrary, *Dyer* said if the Lessor after his regress be ousted, he shall have an Assise and recover Damgages. *Quere* 15. H.7.5. Lord *Cromwell* against *Andrews*.

1021. If a Writ of Discharge of the ancient Sheriffe be delivered to the County Clerk sitting in the County Court, the authority of the said Sheriffe although absent shall presently cease, for if a man be pronounced outlawed of felony in the County Court, and any of the County do afterward receive him, they are accessary, for it is a publick act of which every one ought to take notice.

1022. The Duke of *Somerset* bargained and sold land to King *Edward* the 6. and acknowledged the deed before the Master of the Chancery, but it was never inrolled but put in a Chest; now in time of Queen *Elisabeth*, it was holden that the inrollment will not make it to passe to the Queen, neither as purchaser, nor as heire, because never in her Ancestor.

Pas.

1023. Onely brought an Action upon the Case against the Earl of *Kent* and his wife, and declared upon an *assumpsit* of his wife whilest she was sole, in Consideration that he had imployed great travell and expended 1500 pound about businessses and sures of the wife, that she would repay the 1500 pound, and besides 200 l. more: The Defendants per Protestation that the Plaintiffe did not expend 1500 l. and by Protestation that the Feme did not promise the aforesaid 200 l. over expenses, and for plea said that the Plaintiffe expended

T

10 pounds

10 pounds about, &c. and not above, and that the heir in recompence of part of the Dower of the Feme concluded to make a Lease for years to the Feme to begin after her death, which the Feme caused to be made to the Plaintiffe to the use of the Feme; and after marriage the Earl agreed that in satisfaction of the Plaintiffe of the said *assumpsit* for expenses and travell, the Plaintiffe should retain the Leases, and that at the request of the Plaintiffe, upon which the Plaintiffe demur. *Mounson* and *Manwood* held the Consideration was, against Law, because it imports maintenance, also the Plaintiffe ought to have shewed what businesse, &c. *Dyer*, it seems not to be Maintenance to aid a Widdow in her businesse, but Charity, and that is no satisfaction to retain the Lease which was his own before, and of which no use may be limited. Also it no advantage till the death of the wife, where the amends upon accord ought to be executed in the life of the Trespassour and ought to be executed before the action brought, and not at a day to come, for although such agreement had day to come, the party may refuse, but otherwise in arbitrement, and yet arbitrement ought to be in appearance commodious to both parties, *Manwood* agrees that it is no satisfaction

1023. A writ of Error is brought against *B.* upon Error in a Writ of Covenant, where in the Writ of Covenant *B.* was named Assignee of *C. Barb. & Manwood*, the word Assignee enables the Plaintiffe, &c. & come joy nest. *gar. per le record*, for that, &c. *Mounson Dyer, Wray* and *Bell*, and here is the intire name of the Plaintiffe, which sufficeth.

357.

1024. A Parson made a Lease for 40 years, the Bishop of *London* being Patron and Ordinary confirmed it without the Dean and Chapter, the Incumbent died, the Bishop collated another, who made a new Lease, which is well confirmed, the Bishop is translated, the resolution of the Justices

Justices was certified to the Counsell, that the first Lease stood good, and not the second before both lives of the Bishop & Incumbent which found the Church charged.

1025. There was a private Statute made 35.H.8. that all Leases made by A. of the Land of his life for 3 lives or 21 years rendring the ancient Rent, shall be good. The husband made a Lease for 21 years, to begin after a Lease in Esse, and it seems good, for in the Act is no restraint of Leases in reversion, as is in the 32. *Mounson contra.*

1026. *Chick* devised a house in *Soper lane* to *Alice* his Cousin in Fee simple, and after her decease to *W.* her son, which *W.* was heir apparent to *A.* It was adjudged that the woman is but Tenant for life, the remainder to the son for life, the remainder in Fee to the woman, so the husband of the wife was not tenant by the courtesie.

1027. *Spinofas Case*, if an Alien born doe not pray *Mediet. lingue* before the *venire facias* awarded, he comes too late after, for it appears not to the Court, that he is an alien.

358.

1028. *Salfords Case*, a Custome was alleged that tenant in Fee might make a Lease but for 6 years, and adjudged a void Custome, because repugnant to the Fee, and unreasonable.

1029. A Lease to a spirituall person against the Statute of 21.H.8.c.12. it was adjudged, that it is not void, for although the Statute said that none shall take, said not it shall be void, but ordained penalty, *vide* for that the first part of the Stat. and the *proviso* for hospitalty.

1030. He in reversion in feoffed Tenant for life without deed that shall inure first, as a surrender of the Lease for life, and then as a Feoffment, as Tenant for life surrendered to the Grantee of the reversion, that is first an Attornment, and then a Surrender.

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1031. Join-

Trin.

1031. Joynture after the coverture, the husband and wife levied a Fine of the joynture, it seems cleer, if it be as that which the Conusee had of the gift of the husband, that it is no Bar in Dower. And the election is not given to the wife till after the death of the husband, according stat. 27. H. 8.

359.

welcden against Elhington. Com. fol. 516.

Vicesimo Elizabethæ.

Mich.

1032. He which held of a Mannor in soccage, which Mannor is holden over of the King in *Capite*, purchased a release of the meassualty, he shall now hold in *Capite*, *Quia volenti, &c.*

1033. Vpon a *pluries distresse* 3. onely appeared, the Plaintiffe prayed another *Distingas*, without praying a *Tales*, If the Defendant pray a *Tales*, the Court ought to grant it at his request.

360.

1034. A tenant of Prince Arthur as Earl of Chester in Chivalry in *Capite* died, B. his eldest son is in Ward, B. died without issue, after upon *Devenerunt*, C. was found brother and heir to B. and within age; C. at full age pursued livery *per* a Writ to the Escheator, *per* name of C. son and heir of A. and now it came in question, if the possession continued in the Queen now, &c. And adjudged not. But it is a good livery, for if he had not been named heir to any it is good, for it is a petition; And it is in verity, he is heir to his father, his brother being dead without issue: Also by livery the King shall not part with any thing which is his own, but to do a thing onely to which he is holden in Justice, and for that the Advowson appendent shall not passe without naming: *Contra* in a Grant. But if it be a void livery the entry of the heir is intrusion, which is pardoned by diverse

diverse Parliaments, as also by the death of Prince Arthur.

1035. A Peer of Ireland committed treason in Ireland. it may not be tried in England, *per stat. 26.H. 8. 32.H. 8. 35.H. 8. 5.Edw. 6.* for he is no subject of England but of Ireland; And triall in Ireland is by Parliament, not by Peers.

1036. A Church void by taking a second Benefice upon 21.H. and lapse came to the Queen, who presented A. who was admitted, instituted, and inducted, after which the Queen presented B. A. died, the Patron brought a *Quare impedit* against B. and counted of the avoidance and lapse *supra*, and that the Queen presented A. who was admitted and instituted; and that the Church is void by the death of A. if that be sufficient without saying inducted; and it seems because they said that the Church was void by the death of A. that it implies an induction, and then it is not revokable, for that &c.

361.

1037. A lease to the mother and son *habendum ijs pro termino vite successive uni eorum post alterum sicut nominantur in Indent. & non conjunctim*, It was ruled that they are not Joynt-tenants, but it is a remainder to the son.

Hil

1038. Windsor Bargainee of land for 600. pound, by another Indenture covenanted to remake to the bargainer and his heirs, such assurance as the Counsell of the Bargainer shall devise within a yeer; Provided that if the Vendee make default in assurance, then if he do not pay 500. pound to the Vendor, that he shall stand seised to the use of the Vendor, the Vendor did not tender assurance, and the 500. pound is unpaid, the Vendee had the right of the land, because it was the folly of the Vendor not to require assurance.

1039. In Trespass, upon issue of not Culpable the

the Jury appeared the first day of Hill' Term, the Defendant said, that the Inquest ought not to bee taken, for the Plaintiffe had released after the last continuance, but because the release was after the essoyne day of the *ut. as*, it came not between the last continuance and the *ntas*, therefore the inquest taken, *contra* if in the mean; But then also he shall say, *actio non*, and not that the inquest shall not be taken.

1039. Dower by *Beamond*, the Tenant pleaded assignment of rent out of the land, &c. But because he said not, that it was the land of the Tenant at the time, adjudged against him upon demurrer.

1040. *Altons* case, digging of a trench in meadow, by which the pasture is bettered, is no waste. *Quare* if he plead no waste made, it that be a good evidence, or that he shall plead in Bar.

1041. A Bill of deceit against an Attorney for appearing without warrant, *per* covin and fraud, in an action of debt, brought against the now Plaintiffe, and pleaded *non sum informatus*, the Defendant said, that he was retained for the Plaintiffe and another, and the other him retained for both, and for want of information, he pleaded *ut supra*, *per Curiam*, he ought to traverse the fraud.

1042. Tenant of King in Chivalry, infeoffed his brother, to the intent to infeoff his heir male at full age, whereas at that time he had no male, but his wife was with childe, the father died, a male is born, If this Collusion be found by office, *Quare* it all, or but a third part shall be in Ward upon 32. 33. and 34. H. 8.

1043. The Jury found that the Executors had taken the rent which was reserved upon a Lease *per* tenant in Fee, made of a house and implements, and so asserts the (so) holden void, for the rent goeth with the reversion of the land as *magis dignum*, and it doth belong to the heir.

362.

1044. The second husband and his wife, by Fine did alien the joynture of the wife, the heir within age entered, adjudged that he shall not be in Ward, for he is in as a purchaser, during the life of the wife. If the husband die, *Quere* if the wife may enter against the Fine.

Pas.

1045. The Queen granted Mannor and all woods before this time used or reputed, as parcell, &c. and the wood which was parcell of the Mannor in the time of Edward 6. and by him granted in Fee, and now recome to the hands of the Queen, shall passe *per* the word *ante hat, &c.*

1046. Tenant in socage in *capite* died, his heir within the age of 14. yeers, he shall not sue livery, but shall have *Ouster le main*, together with the issues; Also if the heir be of the age of 14. yeers or above, there he shall sue livery and pay relief, for that is his full age for socage.

1047. Tenant in *capite* levied a Fine, declared by Indenture to be to his use in tail, the remainder to the Conusee in Fee, the issue shall be in Ward to the Queen and not to the Conusee, for by the use the Fee is as a remainder, not as a reversion in the Conusee, although by the Fine the Fee passed to the Conusee, and the Conusee is Donor here.

1048. Termer for a 100. yeers made a feoffement *per* words, *Dedi, concessi & confirmavi*, and by letter of Atturney made Livery, the Lessor being upon the land, yet by Dyer and *urray* the land passeth by the feoffement and livery by Atturney, and the *dedi & concessi* will not make it passe as a Grant of the terme.

1049. After 27. a Fine was levied of land, declared by Indenture to be to the intent that the Conuser shall have 10. pound there out of that during his life, and

the opinion of the Court was, that he may distrain for Rent by the clause in the Statute of uses, without clause of distresse.

Trin.

1050 Tenant in Tail made a Feoffment by Letter of Attourney, the Atturmer ousted the Termers servant, and made livery, after the Termers agreed, saving his Term, that is a discontinuance.

1057. A man recovered by verdict in Assise, and because no warrant of Attourney was found for the Plaintiff, adjudged Errour.

1052. The Sheriffe by *Fieri facias & vendic. exponas*, sold a Term, the first Judgement is reversed, yet the money and not the Term shall be restored, for the sale was lawfull.

Mich.

1053. Indictment upon the 1. and 13. of *Elisabeth* upon a præmunire for aiding *H.* knowing him to be a principall maintainer of the Sea of Rome, and the Indictment was *contra formam Statuti prædicti*, and yet it is not sufficient, because it was alleged to be to the intent to extoll the authority, &c. according to the words of the Statute.

Vicesimo primo Elisabethæ. Hill.

1054. A Custome in *Denbigh* that a feme covert with her husband, by surrender in the Court there, may alien her land, it is not abrogated by the Statute of *wales* 27. H. 8. for it is an usual Custome in our Kingdome. And if husband alien the land of the wife, after issue, and the wife die, the heir may not enter till the death of her husband *per* 32. H. 8. *per Curiam*.

1055. A Coppyholder prescribed for Estovers in anothers soyl, and said that all Coppyholders *eiusdem tenementi usi sunt*, where he should say *eiusdem Manerii*, and for that adjudged a void prescription.

284. Pas.

1056. One brought a *Quare impedit* against the Queen, the Ordinary and Incumbent *pendente lite* the Queen upon resignat. presented another, who is instituted and inducted, and in by 6 months, yet he is removable by a writ to the Bish. although he be not party nor privy to the Judgement in the *Quare impedit. Plufors contra.*

Vicesimo secundo Elisabethæ. Mich.

1057. The Sheriffe took an Obligation with condition that if the Obligee shall appear, &c. and then and there (shal) answer, that the Obligation shal be void, adjudged upon demurrer that it is a good obligation according to the Statute 23. H.6. for it amounts to as much as then and there to answer.

1058. Attaint was brought in the common Bank upon a verdict in the Kings Bench in an information of usury, and the Defendant who brought that being in Execution of the Marshalsey *tam pro Rege quam ex parte* for the penalty was removed by *corpus cum causa*. And now a writ of *manucapi' sufficiente securitate* came from the Chancery to the common Bank for enlarging the prisoner *ad prosequend. &c.* And agreed that the recognisance shall be to the Queen & the party, and as well to discourage sutors who are in Execution by triall, to bring attaints, as also because the warrant was in the copulative, that he shall find Mainprise to render his body, & satisfy the sum, they would have the recognisance of the *Mainpern. copulative.*

365. And because the party could not find mainprise according he was licensed by the court to go with a Keeper to instruct his counsel after the first verdict was affirm'd.

1059. Avowry for dammage Felant in, &c. the Plaintiff said that he is seised in Fee of the close adjoyning, and the Defendant and those whose estate he had, &c. time beyond, &c. were holden to inclose, the Defendant said that the Close where, &c. was the Franktenement of A. without that the Plaintiffe was seised of that
in

in Fee, the Plaintiffe demur. And holden that this speciall traverse of the estate in Fee is good, because the Plaintiffe had given advantage of that; Yet if he had but an estate for yeers, or at sufferance, or common, or licence, *hac vice*, it sufficeth, *contra* it but a trespasser. *S.F. Leke.*

366.

1060. *Ejectione firme*, supposing a demise *per* the Lo. Cromwell, the Defendant said, that before the Plaintiffe or the Lo. Cromwell any thing had, one B. was seised in Fee, and teoffed one Andrews, who died seised, and his son left to us, by which we were possessed till ousted, and *le fils deseisi per dit B.* which B. after infeoffed the Lo. Cromwell, who demised to the Plaintiffe, upon which the Defendant reentred, &c. the Plaintiffe took the feoffment and discent by protestation, and for plea before the ejectment B. infeoffed the Lo. Cromwell, *absque hoc quod B. diff.* the son and the Defendant demurs; But it was holden a good traverse by the superfluous folly of the Defendant, for in this action it behöves either to confesse and avoid, or else to traverse the title in the Court; for a bare colour as in Assise and Trespasse, which do not containe title in the Writ, nor Court, (as that a ction doth in both) it is not sufficient, so that the disseise here shall be entended a confession and avoiding of the title, and of necessity it behoves to be traversed. *Et 9. H. 6.* it is a maxim, that a disseise alledged in Bar, or replication, is always traversable; yet it may be the feoffment of B. to Andrews, and the dying seised, are also traversable at the election of the Plaintiffe.

1061. In *Attowry Vernon* conveyed to himself the land, as collaterall heir of the Lo. Powes, *eo quod dom. Powes obiit seifitus in feodo sine exitu, &c.* The Plaintiffe confessing the dying seised, conveyed to him by the devise of the Lo. Powes, *absque hoc quod terra descendit* to the Defendant; But it was adjudged against the Plaintiffe,

iffe, because he had not traversed the dying seised, but the discent.

1062. A man seised of 10. pound land in *capite*, and five pound in soccage of a subject, he devised all the *capite* land, and died seised of the soccage. The Queen shall have the 3. part of the *capite*, and all the soccage in ward; for otherwise the statute 32. & 34. H. 8. shall be defrauded.

367.

1063. A terme is devised to the Executor, who entered and died before probate, yet his entry was Ruled to be a good Executorship, and his Administrator shall have it.

1064. Vpon issue joyned in *Ejectione firme*, the Plaintiffe suggested, that he and the Sheriffe, and one of the Coroners were all of the livery of the Count' *Wigorn*, and prayed a *venire facias* to the other Coroner, and the Defendant confessed the suggestion, for that processe was made according to the prayer, and the Jury found for the Plaintiffe. Now in arrest of Judgement, because it is not a principall challenge, yet because *ex assensu partium*, and also the statute 32. H. 8. of Jeofails helps the misconveyance of processe, Judgement was given.

1065. In a *Formedon* the Tenant vouched one as cousin and heir, the vouchee without demand of the view entered freely, as he who had nothing by discent: Dyer said, that if the Plea had been prayed to abide, that had been a good entring, but now it may be he is vouched upon his own warranty: But the Tenant said, that he assents, and so at issue. Dyer held that the Plaintiffe shall now count presently against the vouchee, before that issue be tried; yet some held this issue triable presently.

H.l.

1066. Vincent made a feoffment to the use of himself

self and his wife in the tail, the remainder to the wife and her heirs for ever, of land holden in Knights service and died, having issue a son within age, the Lord shall have the Ward of the body and the 3. part of the land.

1067. Erfour brought in the Exchequer chamber, upon Judgement given in the Exchequer upon information of usury against *Ken pro acc ptat* 80. pound *pro accommodatione & dampnatione diei soluc.* 500. pound, &c. 1. Error was shewed, because it was not expressly shewed if *Ken* or other accommodat'. 2. Also the Verdict was, that *Ken* accepted for accomod' and day given. 3. Also and so the information also where the Statute is in the disjunctive *Curia advisare*. The said information was at the commandment of our L. the King onely, where it should be an information *qui tam pro dom. Reo. &c.* and the *venire facias* was awarded to the Sheriff of the County of *Somerset*, where the offence is supposed in the information to be in *Middlesex* in part, where the Defendant joyned issue *quod non habuit nec accepit*, the Verdict was non Culpable, and the said information was exhibited before a Baron onely in the vacation.

368.

1068. Vpon a trespass upon the Case in *Ipswich*, where according to the custome the Defendant was committed for default of *Mainpernors*, and after upon Verdict was condemned, and after upon request of the Plaintiffe, committed for the Execution, but that was not entred of Record, and he escaped. Now in debt brought by the Plaintiffe in the Bank upon the Record, the Defendant confessed the Judgement *supra*, and averred the second committing at the request of the Plaintiffe for execution, the Plaintiffe said, *Quod non habetur tale record'* of his request, the Defendant demurred, and good cause, for he had not alledged that it was of Record, and the Plaintiffe had good cause to demur, if the committing in

in Execution by the Bailiffs out of the Court had been insufficient. *Quære hoc.*

Paf.

1069. A man seised of land in Fee had issue two sons, and obliged him and his heires in an Obligation and died seised, the eldest entred and died, the youngest shall be charged as heir of his father notwithstanding the mean descent, so of Grandfather, father and son; And so of a Grandfather, and two daughters, which have two sons and do not make partition, for they shall joyn in Assise notwithstanding severall descents, and they are one heir to the Grandfather, if the daughter becomes heir to the father by the possession of the brother, or the father heir to the son by a mean descent to the uncle, which by no means may be heir to the the Obliger. *Quære.*

1070. Lands to the value of fourteen pound *per annum* were conveyed to the Dean and Chapter of *Pa.* to find ten Marks annually to a Priest to sing, &c. and the other profits for an *obite*, they maintained the Priest with ten Marks, but they observed not the *obite* within five years of the Statute, the Rent of ten Marks is onely given to the King, by the first of *Edward* sixth, and not the land, for that belongs to Dean and Chapter of *Pauls.*

1071. The form of a Certificate the Bishop of accoupled in Matrimony, & *solutio Dofforum*, that the wife of full age married to the husband at the age of twelve years who died after he was put into the bed to her, and within age of consent, he ought to certifie lawfull espoused in case of Dower, *quamvis alias sint sponsalia de futuro.*

1072. By all the Justices, if a Termer grant all his estate to *A.* to the use of himself and his wife for their lives, if now he grant all his interest it is void, for he

he had nothing, for the 27 executes not the possession to that use.

1073. *Morgagee* of *Capite* land died, his heire within age, and the King leased, and also certain socage land, the Morgager performed the Condition, he may enter, and devest the Wardship of the King, of the body, and of the land. *Knightley's Case*.

1074. The Tenor of a Recognizance by *mittimus* came out of the Chancery into the Common Bank, and it was holden that upon the tenure a *Scire facias* shall not issue: but an originall Writ of Debt, and declare upon the Tenure.

1075. *Plomer* Grantee of annuity *pro consilio impend.* was of counsell with the adversary of the Granter, not being requested to give counsell to the Granter, the annuity is not gone.

1076. The Statute 13. *Eliz. cap. 12.* which ordains that he which reads not the articles of Religion shall be deprived *ipso facto*, ordains also that no lapse *per* deprivation *ipso facto* shall incurre, but after notice given by 6 moneths, the Patron is knowing of the not reading, and suffered two years to incurre, yet because he had notice by the Ordinary the King may not present.

1077. In an *Ejectione firme* because no evidence was given touching dammages the Jury found the dammages according to the Count, which was excessive, yet attaint lies not,

370.

1078. *Clifford* brought an *Eiectione Custod. rer. & heredit.* they are at issue upon traverse of the Tenure which was tryed for the Plaintiffe, and dammages asselled, in arrest of Judgement it was said that the Writ lies not, for the ejection of the body, but of the land onely, upon which the Plaintiffe relinquished the dammages and costs for that which was asselled for both

both, and had Judgement for Ejectment of the Land.

1078. The Ward and marriage of the heire onely may not be granted without deed.

1079. Two are obliged *coniunctim & divisim* as principall Debtors, without words that the one is pledge for the other, a Writ of *plegius acquietand.* lies not.

1080. Two being robbed of one joint summe of money, they may joyn in an action upon the Statute of *wint.* but otherwise, if it be of severall summes. The Hundred pleaded that they freshly pursued the Felons *per* three Towns to the Town of *A.* which is in the Hundred next adjacent, and there they gave hue and cry to the inhabitants: Adjudged no plea, for the Statute is not satisfied without apprehending or answer of the malefactor, or of knowing their names, that so they may be indicted and outlawed, *vide* new Stat. 27. *Eliz.*

1081. Tenant in *capite* made a Feoffement to use of a woman which God should give in marriage to his son for life, the remainder to the son in tayl, the marriage took effect, the father died, the son sued Livery for the third part in the life of his wife, for the conveyance intended for his advancement, he taking the profits and being also the principall cause of the estate.

Trin.

1082. The Statute of *Glocest. cap. 1.* warrants costs and dammages to be given in a Writ of Entry *in le post* upon disseiser made to the Demandant in meane, otherwise if to the Ancestor of the Demandant.

1083. The Bishop of *winchester* granted annuity out of a Manor to Doctor *Dale* for life *pro consilio impenso & impendendo*, The Dean and Chapter confirmed, the Bishop died. *Quare* if the Grant be void against the Successour *per* Statute 1 *Eliz.* made against Grants, Feoffements,

Feoffements, and Conveyances, &c. Also if a Debt lies against the Executors of the Bishop for the arrears incurred in his life, during the life of the Grantee.

Vicesimo tertio Elisabethæ. Mich.

1083. An Indenture of covenant between *A.* and *B.* in which *A.* covenanted in consideration of a marriage to be between his son and the sister of *B.* that he at the costs of his son by his sufficient deed, would before *Michaelmas* assure land to his son, and *B.* did covenant if *A.* performed it, that then he would make a generall release to him. Although *A.* was ready, and his son tendred not the assurance, yet if the conveyance be not made, *B.* is not bound to make a release, the Defendant pleaded in Bar perform. of all covenants *ex parte sua*, &c. and in the rejoinder he onely shewed that he was ready, it is a departure.

1084. A man devised all his Lands to his sister, except one Manor, which I appoint to pay my Debts, and made two Executors by name and died, the one Executor died, the other may sell and pay the Debts for the intention.

1085. Certificate of Excommunication under the Seal of the Commissioners *Delegates*, to which is appeal from the Prerogative Court of *Canterbury* was allowed.

1086. The father Tenant for life, the remainder to the son, the son devised the land which he had or may have in reversion, after the death of his father, to his wife, rendring for her naturall life 40 Shillings Rent to the right heires of the father and died, living the father, by the Court no other estate shall passe but for life when the remainder falls, viz. after the death of the father, and then also begins the payment of the 40 shillings by the year, for the father had no right heire during his life.

1087. The

1087. The Condition of an Obligation being upon divers points, in Debt if Issue be joyned upon one point which is found against the Plaintiff and he barred, although after all the other are broken, yet he shall never sue his Obligation again *per Curiam*.

1088. An action upon the Case supposing promise to reallure Land, was brought by the Lord *St ff* against Alderman *Haward*. The Jury found that the Defendant did not promise in manner and form, notwithstanding if *H.* and *W.* witnesses have sworn true, as it seems to us they have, we say that he had promised, and if the court think so they assessed damages: *Dyer* and *Aylse* assembled in the Chancery, held it *cleare* that the verdict shall be for the Defendant.

1089. An Executor made Executor and dyed before probate, his Executor is not Executor to the first testator. Notwithstanding if the goods after Debts and Legacies paid were bequeathed to his testator, the Administration shall be committed to him with the testament annexed, and if they were not bequeathed to him, the Administration shall be committed to him to whom they were bequeathed, and for default of one such to the next of blood of the first testator, which demands that, *Istedes* case.

1090. Two provisos were in two severall Indentures of conveyance of severall Manors to *A.* and *E.* that if the Feoffor pay or render 20 shillings to *A.* and *B.* or to the heires of *A.* that the conveyance shall be void. *A.* died, tender to *B.* is not sufficient, but to the heire of *A.* and it shall be 20 shillings for every proviso. Otherwise of another collateral Act; one onely sufficeth for both as a cause of land descended is Assets for three severall Formedons.

1091. The Lord of a Waste of 200 acres, he infeoffed one of 50 acres towards the North, the Feoffee put in his beasts and they estrayed into the residue, and

they are distrained dammage fasant, and well: for the purchasers ought to inclose, or to keep the beasts within the 50 acres, and so ought the Lord of the residue. Adjudged.

1092. A Parson made a Lease by Indenture for 12. years, and covenanted to suffer the Lessee and his assigns to enjoy for those years, and that he would not do any act by which the Benefice should be void: and that one A. Farmer of part of the tythes should pay 8 pounds annually for 7 years, and was obliged to perform the Covenants, and now in a Debt brought upon the Obligation, he pleaded performance of the Covenants, *ex parte sua perimplend.* till 20 of *Eliz.* at which time he himself was absent by the space of 80 dayes generally, and spake not of the Statutes 13 *Eliz.* c. 17. and 14 *Eliz.* cap. 11. And as to the Covenant in the negative, he said nothing *ut oportet*, but it seems there needs not expresse mention that the Farmer paid the 8 pounds, for it seems implied in *ex parte sua perimplend.* *Quere* if the Covenants and Obligation are void from the beginning, or but after the absence.

373.

1093. In ancient demesne Tenant in Tail levied a Fine with Proclamation, and in a :ormedon there brought the Tenant pleaded the Fine to be a Bar to the Tail, by the Custome, and Judgement there given according, upon which a writ of false Judgement was brought, and if the Custome of Barring Tails be averable against the Statute *de donis condic.* which is within memory was assigned for Error. It was said if the Judgement be reversed; Judgement shall onely be that he shall be restored to his action, and then they will adjudge again according to their Custome.

1094. Debt against a Neece, as Cousin and heir upon an Obligation, she said that onely a reversion descended, &c. And Judgement was given that he shall recover

recover the Debt and damages of the aforesaid reversion to be levied when it falleth, and shall have a special Writ to extend the intire land, it seems it was by the Common Law before the Statute West. 2. cap. 18.

374.

1095. Tenant in generall Tail having Issue two sons, the eldest had issue a daughter and died, his wife with child of a son. the father suffered a common recovery to the use of himself for life, the remainder to the recoverers for 24 years, the remainder to the heire males of his body; the recovery was had returnable, *Octob. Mich. viz. 9. day of Octob.* upon day at the house of 9 of the clock in the morning, he himself died, yet it seems very good, and the Writ of *Habere facias seisinam* was awarded and returned served, and after the son in the belly of the mother is born, if the uncle or the son now born, or the daughter of the eldest son shall have the land was now the Question. And it was resolved by the Justices that the son *posthum.* shall have it as Issue male of the body, for if it be by purchase because of the mean estate for years, the uncle may not have it, for it behoves to be heire as well as male, who shall take: And the daughter of the eldest son is heire: But it seems that it shall be taken by discent till the son born, also by all the Justices but onely Dyer and Peryam, that the recovery is executory against the Issue in Tail, because of the recovery in value.

1096. *Worsley* covenanted with his eldest son and two others, to stand seised to the use of himself for life, the remainder to his eldest son in tail, the remainder to himself in tail, the remainder to *Richard Worsley* his bastard son in tail, and if any in the remainders shall make discontinuance or other prejudice, to any of the remainders, his estate shall cease, and they shall stand seised to the use of the next in remainder, according to the limitation. The father surrendered and granted all his

estate to the eldest son, who levied a Fine with Proclamations, and 5. yeers passed, the bastard supposing that hee had title without entry made a Lease to try the title, and within the yeer information upon the statute 32. H. 8. for buying of titles was exhibited. And by all the Justices being but a terme, it is within the statute, as in *Partridge Case*; And it was holden that for the use to the bastard there ought to be a valuable consideration, for naturall affection is not sufficient, for he is a stranger in the law, although a son by nature. Besides if the bastard had title, yet that the *non claim* within 5. yeers of the Fine, had barred that. And as it seems, if the consideration had been sufficient, that he had title in the life of the father, for as it seems the estate tail of the father in remainder was in abeyance by grant of all his state; so that the bastard who had failed in remainder is immediate to the advantage.

Hill. 375.

1097. A man demised divers closes *per words* demiseth, granterth, and to farm letteth, together with all manner of timber, wood, underwood, and hedge rows, except the great Oaks in such a close, the Termer cut where they are not excepted, it is waste Adjudged, for he whch had timber demised may not cut, and the word Grant in the Lease alters not the same from being a Demise.

1098. Error brought in the Kings bench upon recovery in Assise, and the Iudgement affirmed, now they brought a Writ of Error in the Parliament of the Iudgement in the Kings bench, and the chief Justice brought the Record in the Parliament, and also the transcript, and after that there examined, the record was remand, and the transcript remained, upon that a *Scire facias* awarded. The Errors assigned in the Kings Bench were because the parties were adjourned in a foreign Countrey to plead, and upon that issue joyned, the
Assise

Assise passed without Writ of resummons awarded: also no place was in the *teste* of the *Hab. Corp.*

Paf.

1099. A man made a Lease for life rendring Rent, and died, if the Executor shall distrain or have an action of Debt, for the arrearages in the life of the testator, *per 32.H.8.cap.37.* Some held that the Statute is to be understood, of rents in grosse, and not incident to the reversion: Others held contrary by *37. H.6.39.* and *10.H.6.* that Debt lies by the common Law for the Executor or administrator of the Lessor.

376.

1100. The Act of 13. *Elix.* against Fugitives, and the statute of Explanation 14. gives no greater interest to the Queen in the lands of a Fugitive, than he had before, by seisure, for not returning after License determined, upon receipt of the Privy seal: And therefore where the Queen seised before 13. and granted the land by Patent, *quam diu in manibus nostris, &c.* and after the 13. seised again, and one as his Steward grants a Copy it is void, for it shall be steward to the Patentee.

1101. The Statute of Vlury 13. *Elix. Cap.8.* is made to continue 5. years next after the end of the said Parliament, and then to the end of the first Session of the Parliament then next ensuing, if (next ensuing) shall be referred to the Session, or to the Parliament. And adjudged that to the Parliament, which is the principall substantive, and it is for the Common-wealth; So that 3. Session of the Parliament began 14. being the 13. did not end it; But it shall be a new Parliament after the 5. years ended; And that it was so holden was published by Proclamation.

1102. Judgement given in the 5. Ports. False judgement lies not in the Kings Bench, nor in the Common-Pleas; But it is reverfable in the Court of the Gardian

of the Cinque Ports upon examination, *apud Curiam Shep.ware.*

1103. The Justices of Assize have authority by Statute 25. H. 8. Cap. 6. to award *Tales de circumst. Coronat.* for favor in the Sheriffe.

1104. A man seised of a messuage in D. by purchase of T. Cotton, he made a feoffment by letter of Attourney, of the house in D. *nuper Ric. Cotton*, & the opinion of the Court was, that it is a good feoffment, for Cotton without other name is very certain, and so is the messuage in D. without other name; so that T. Cotton is but surplusage.

1105. Tenant in tail suffered a Common Recovery, and died before Execution, a *Scire facias* lies against the issue for Execution, because of the value. *Vide Manxels Case.*

Trin. 377.

1106. A man grants a reversion for life or yeers, rendering when the reversion shall happen 10. pound rent; that is to be understood, when the possession of the reversion shall fall, or happen, because most strong against the Reservor.

1107. Annuity was granted for exercise of Stewardship, and after Recovery in Annuity the rent was againe behind, and the Grantee brought a *Scire facias*, the Defendant said, that the Plaintiffe hanging the Writ, had refused being requested to hold Court; and adjudged a good Plea; for upon the *Scire facias* he had judgement of the arrearages before, and hanging the Writ, where if he refuseth the Annuity cealeth, and then he shall recover the arrearages by Writ of debt onely.

1108. Office was found after the death of the Lord Powes, that he died seised, and V. *quon* is his cousin and heir, and within age. G. rendered traverse of the dying seised, and that V. is not heir, and had the land in Fee ferme,

ferme, *Vernon* came of full age, the Queen is at election to drive him to sue generall livery *non obstant* statut. 33. H. 8. and that the land is of the value of a 100. pound *per annum*, and if the traverse be not found for G. at the next Assise, *Vernon* may proceed after with his livery.

1109. *Powles Case*: Husband and wife are sued in the Bank, the husband being a Clerk of the Chancery, they shall not have the priviledge, for the woman is not impleadable there. Otherwise it is where the husband is impleaded in the Bank, & *veniendo*, &c. he and his wife be arrested into a base Court.

1110. A Clerk which had a Benefice over the value of 8. pound *per annum*, without dispensation took another, and he was to that instituted and inducted, but did not subscribe to the Articles of Religion, according to 13. *Elix.* and after died. *tenus per Curiam* that the first Benefice void by death. and not by the statute 21. H. 8. because never lawfull Incumbent of the second.

The end of the Reports of the Lo. Dyer.

FINIS.

The following is a list of the names of the persons who have been appointed to the various positions in the various departments of the Government of the State of New York, for the year 1900.



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matters contained in every Case
in this Book.

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1. Attaint or Error, where maintainable by him in reversion.
 2. In whose name the Kings Grantee of a Recognizance may sue.
 3. A Clerk cannot plead in Bar before Induction
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 5. If an Executor redeemeth goods pledged, it shall bee allowed.
 6. where an Alienage is a plea in disability.
 7. where issue in tail is barred as privy by 4.H.7.
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 9. Dye h lieth not till the reversion be recontinued.
 9. where the rent shalbe apportioned.
 10. No remitter against a Record.
 11. what act by the servant is felony within 21.H.8.
 12. Idempitate nominis where it lieth,
 13. A rent de novo where it is devisable.
 14. where payment is a plea without an acquittance.
 15. No judgement till the issue be tried.
 16. where the husband shalbe said to be an Assignee.
 17. where the tenant may vouch at large.
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25. where Executors liable to a Covenant without naming, but not the heir.
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28. Much good matter touching Relations.
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30. 31. Livery in one acre in the name of all where good
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35. An Obligation good without in cuius rei, &c.
36. Obligamus nos & utrumque nostrum, is severall.
37. a Covenant to take hedge boot and fustell by the assignment of the Bailiffe how to be expounded.
38. Debt against Executors for moncy delivered to the testator, where wager of Law lieth, and where not.
39. One executor grants all his part, the whole passeth.
40. In Trespasse where the Plaintiffe must make a new assignment.
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44. where a Petit. Cape doth lie.
45. To whom the present action belongeth.
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277. What act is a reconciliation after an elopement.
278. The *Plaintiffe* enters between verdict and *Judgement* if the defendant is not, *Quare*.
279. What should be said at double plea and a good traverse.

The Table.

280. Tenant in tail, leases for yeeres and is attainted having issue, if the King shall avoid the Lease.
281. Where the King may grant a thing that is not in him.
282. What is wast in a Stable, and what is not.
283. Who shall have election.
284. Of Feoffment by letter of Attourney by an Infant, and much good matter there.
285. Where Contra formam collationis lyeth.
286. In a replevyng for rent a demurer and diuers exceptions taken
287. Questors of land intailed.
288. In an action of debt nothing by descent pleaded, Quære.
289. In a writ of right Close where a Procedendo lyeth.
290. What pleading as a Jeofail.
291. When a second Lease for ten yeeres shall commence.
292. In an action of debt non est factum pleaded.
293. Debt against an administrator of an administrator.
294. What Traverse maketh a Jeofail.
295. A fine levied of land Capite by just Mervin.
296. In an action upon Assumpsit for what time damages must be assessed.
297. A Covenant without the words Heirs or Executors.
298. Where a speciall verdict may be found.
299. A power to make Leases for life 10 yeeres.
300. An assise of the Filizers office.
301. Where an acceptance of rent barreth.
302. The Plaintiffe declareth of twenty trees cut, the Jury found ten.
303. Tenant in tail deviseth land it is no discontinuance.
304. A Vicar refuseth to pay a subsidy, if the vicaridge bee void.
305. Where modo & forma is not materiall.
306. Where a Repleader shall be awarded, and where a grant is good to a trespasser.
307. A prescription to distrain a Ferrymans Barge for repairing of a Bridge at Graves-end.
308. Who shall enter for a Condition broken.
309. Where a fine by one Sister barreth the other.
310. Demurrer upon bar to the Avowry.

The Table.

311. *Where the Defendant need not to be supposed in the custody of the Marshall.*
A Precept to the Sheriffe without writ or Teste of the Chiefe Justice.
312. *An Action of the case for words.*
313. *If the Court ex officio are bound to take notice of 23 H. 6. c. 10.*
Outlawry is excepted in that statute.
314. *An Action of the case for a chain of gold: very good matter.*
315. *A good estate in remainder although the particular estate fail.*
316. *If the issue shall inherit against a Collaterall warranty, fine with proclamations, and a remainder of his father.*
317. *Absque hoc quod talis dimisit, evidence that he had nothing in the land at the time.*
318. *Where it is in the discretion of the Judges to grant restitution.*
319. *What is a good Lease by a Prior within 31 H. 8.*
320. *P. admitted but not deprived; a new Dean confirms a Lease.*
321. *Where an Heir shall sue Livery, or Ousterlemain.*
322. *Upon nothing by descent in fee, a speciall verdict given:*
323. *A debt due to the Q. is not gone by suspension.*
324. *A Condition annexed to a Will, and where it may defeat part only.*
325. *A woman conspired to rob her Mistress, if principall, and it perit Treason.*
326. *One intitled by the common law, and another by sta. cannot join in partition.*
327. *Executors refuse to pay debts, if the heir may enter and pay.*
328. *J. C. vowed to one and said, Behold King Edward. Treason.*
329. *Upon a Privy Seal a subject refused to return into England.*
330. *The Teste of a writ of Entry before the return, is Error.*
331. *If the heir being in by 27 H. 8. be remitted.*
332. *Will by the B. if it shalbe ad exheredationem Episcopi, or Ecclesie.*
333. *The Act of 23 H. 8. not suffered to be given in evidence.*
334. *If a Church void by the grant of the next avoidance is passed.*

The Table.

- 335. If Grantee of a Seigniorie shall have a Wardship sold before.
- 336. Attorney makes livery upon Tenant for life in possession.
- 337. An appeal of death, and much good matter therein.
- 338. The statute of 1 & 2 Ph. & M. taketh not away 35 H.8.c.2.
- 339. A Lease made by the Surveigors of the Marquesse of Dorset.
- 340. A plaint must begin the same Fair the contract is made.
- 341. A Parson makes a Lease, and is deprived, the Incumbent may enter.
- 342. Issue in remainder may have an action within age if he will.
- 343. The year of delivery of the warrant to the Chancellour omitted.
- 344. If an appeal lieth against the accessory.
- 345. Devise of Gavelkind, remainder proxim. hæred. masculis.
- 346. Notwithstanding 1 & 2 P. & M. Trials according to the Common law.

What accusation is sufficient within 5 Ed. 6.

- 347. A Jeofaile for defect in the Replication.
 - 348. Lessee of a Disseisor continueth possession after entry of the Disseisee.
 - 349. In a Quare impedit three points inquirable.
 - 350. Executors grant a next avoidance, it is an administration.
 - 351. Justices fined in the Star-chamber for sitting contrary to the Stat. of 5 & 6 E.6.
 - 352. A Dedimus potestatem to receive an Attornment.
 - 353. A Petition of Right in nature of a Formedon in remainder, good matter.
 - 354. A difference between a Condition and a Confidence; also where a request must be made to the King.
- A Bar by warranty and assets which are after evicted, Quære.
- 355. What is a breach of a Covenant.
 - 356. If a Rent-charge for years passe by a devise paroll, and what is devisable by paroll.

If a Remainder be good depending upon a particular estate in suspense.

- 357. A. makes a feoffment, and is attained, his wife shal not have Dower.

The Table.

358. Acceptance of a new Lease is a surrender of the old.
359. E. 6. grants to his sister the manner of D. dum sola, &c. (see grants a rent, &c.)
360. A writ of forcible entry upon the statute of H. 6.
361. A diversity where the Asswaut shall have costs and damages upon 7 H. 8. and where 21 H. 8.
362. If the lessor be a disseisor till agreement to the disseisin where a man may justifie a detaining with force.
363. Where a man may be detained with force.
364. Where a supply to satisfie A. third part may be taken out of the wifes two parts.
365. A lease rendring rent at the Feast of St. M. or in a month after, good matter.
366. A device not within the statute of 1 Rich. 3.
367. A man over sea is disseised and after recomes and departs A Patent of the Judges Office.
368. An alien arraigned for Treason contra ligien' su' debi' good. No triall in Treason per mediatatem linguæ.
369. Information upon arrears of account the defendant may not wage his Law.
370. Where severall Formedons must be for him in remainder.
371. Deputy Dean by paroll confirms a grant by the Bishp' Quære.
372. The remedies provided by 8 & 18 of H. 6.
373. An use shall not be averred against an use expressed, what is a Joinder within 21 H. 7.
374. What fine levied to a Feme Coverts maketh a forfeiture.
375. A judgement in debt against the heir what manner of Elegit shall issue. An assise of an Office of Register of the Admiralty.
376. 27 H. 8. executes the possession, form, quality, &c.
377. What words maketh a Covenant and not a Lease.
378. Where a man must plead in debt alwayes ready.
379. Variance in a grant in the name of a Corporation.
380. Where a device shall be judged good for two parts.
A grant made by the Chief Justice of the Office of Prothonotarie revoked, because the Grantet was unfit.
381. A Sherifes Office seised, for an escape without a Scire facias.

The Table.

382. Where an action of account lyeth and not a sute in the Court Christian for a legacy.
383. A man in execution in the Fleet being before condemned in the Kings Bench, is removed into the Kings Bench, he is in the custody of the Marshall for both.
384. What words make a Condition, and what a Covenant.
385. One pannel and its severall Inquests in Law.
386. The construction of the word quilibet to maintain a prescrip^r.
387. Where Effigneor must be sworn.
388. Whereby a remainder in the Q. an ancient seignory is extinct.
389. A man pleads slanderous words of the K. how he shall be punished
390. An use cannot rise out of an use.
391. No words in 31 H. 8. restrain a power to devise land deviseable before that Statutes.
392. Where a Melius inquirendum lieth at the Common law.
393. A man cannot make his right heir a purchaser without departing with the Fee.
394. An Office of Stewardship granted by a Bishop to A. he ought to attend his service to every successor.
395. Where by a Fine, a Condition is not taken away in a former Indenture.
396. In writ of entry in the quibus, divers materiall things moved in arrest of judgement.
397. An action upon the case against an Ostler, what is good evidence for the Defendant.
398. Where no part of the Soccage shall supply the third part except covin may be averred.
399. A chief Justice of the Common pleas made a Judge of the Kings Bench the former place is void.
400. Where an acceptance of rent affirmeth a lease.
401. Two sue in the Admirall Court, for a thing within a County, an action upon the case lyeth against one.
402. A custoner purchaseth land with the Queens mony, the land shall be ceased in the Queens hands till, &c.
403. Where an action is not maintain^d by an executor of an execu^r
404. A lease to three, to the first for life, the remainder, &c. they are not joint Tenants.

The Table.

405. A man bound with two sureties for their security sells them beasts, he faileth of payment, and is Felo de se.
406. The Master is chargeable for the Servants offence.
407. Where the Plaintiffe makes a new assignment he ought as well to prove the Buttells as the names; Quære.
408. What shall be intended a tenure in capite, and where it must be traversed.
409. Husband alien joint purchaser with his wife dyeth, the wife may enter into all.
410. One in execution shall not be dismissed by the protection of the Kings service.
411. A man condemned in debt hath land in severall Counties, the Plaintiffe may have an Elegit in every of them for all, or may divide his debt.
412. Where the heir shall be in ward during the life of the wife.
413. Where the Clerk of Assise may bring in the verdict without Certiorari.
414. A devise of the moiety of his goods to his wife, what shee shall have.
415. Where the Plaintiffe may have a Procedendo to the Justices.
416. Where a man cannot make a Joint prescription.
417. Resolution of the Justices upon the sta of 1. of E. 6.
418. Custom upon cloth inhanced without Par. Magna customa & parva customa.
419. What words amount to a Will.
420. What Act maketh a man Executor of wrong.
421. The Patentee shall have a Constat by 3 & 4 E. 6.
422. Non est factum, pleaded, and upon demurrer much good matter.
423. Judgement in a Scire facias upon a Recognizance reversed.
424. How and when livery shall bee sued of land holden of an Honor.
425. An information of perjury.
426. An Accedas ad Curiam how it shall bee directed.
427. Where the Queen ought to render livery to him who it found heir.

428. By

The Table.

428. By the grant of a Forest the game passeth.
429. where a Superedeas by paroll is good.
430. A prohibition for tithes of barren land improved.
431. The construction of Si contingat.
432. A Replegiari, and much good matter.
433. A pardon of an Outlawry. Ita quod stet rectus, where it should be Satisfaciat querentes.
443. whether incidents in a Grant may be accepted.
435. In an Alias Replevin the Sheriffe returned that the Defendant claimed property.
436. where acceptance of Rent shal wave the advantages of a disseisin.
437. In the Originall the Plaintiffe was named Sadler, and in the Scire facias Psalter.
438. In quo Minus if the party plead not well, the Court ought to aid him for the benefit of the King.
439. Cestui que use of land in capite before 27. died seised of Socage, the King shall have the ward of them.
440. A Jeofail in debt against the Executor of an Executor.
441. where there may be two or three terms between the Tesse and return of an Originall.
442. A Replevin nor a Trespasse shall not abate by the death of one of the Defendants.
443. The office of Exegerter of London is incident to the office of Chief Justice.

The Exegerter of London was committed to the Fleet, but the Iudges Bank granted a corpus cum causa because hee was a necessary Officer.
444. what cause maketh a principall challenge.
445. The Offices of the Chirographer and custos Brevium are in the Kings gift.
446. A memorandum is not sufficient to make a surrender of an Office.
447. A Licence to go beyond sea, upon refusal to return, his lands and goods are to be seised.

where a Certificate may not be traversed.

The Table.

448. A devise that A. B. C. may sell, &c. if A. die B. and C. sell, otherwise of his feoffees in generall.
449. If a statute giveth a penalty and treble damages the Plaintiff shall not have costs.
450. The party may challenge the array for cause of age, notwithstanding a false return.
451. A Termor is rejected and re-enters it, the disseisin remaineth if the Lessor pleaseth.
452. The statute of 32 H. 8. of the Court of wards giveth no authority to grant wards which may happen after.
453. A divorce *Causa frigiditatis*, dissolveth the marriage Ab initio.
454. In dower some confessed the action, others demand the view and granted.
455. A man reprimed before judgment, if hee shall have Clergy.
456. Jointenants make partition after the stat. 32 H. 8. by parol, Quere.
457. A duplicate of a Patent, and the effect of it.
458. A feoffment Borough English to the use of the feoffor and his heirs, yet the youngest shall inherit.
459. A fine levied upon a writ of Customes and Services.
460. A debt against two by severall precipes and severall judgments given, a joint writ of Error lieth not.
461. Upon oath the Testator was not satisfied, Executors had a Certiorari and begun de novo.
where payment to an Executor as an assigne is good.
462. where there shall be a wardship of the third part and of the
463. body of the heir, by 32.
A Sheriffe being removed disavoweth a Return.
464. A woman bound by the act of the husband.
465. A stresse for damage feasant, and a traverse taken:
466. D^r Indictment of one as accessory without Malitiose.
467. An receipt by the hands of another, no wager of Law.
468. If judgment against a Plaintiff in debt for want of form.
469. In a Lease of Trees are excepted, Quere.

The Table.

470. In dower issue upon life and death, triall by proofes in that case.
471. The Sheriffe returns a Devastavit, what judgment and execution.
472. 1 Mar. c. 7. touching adjournment of the Term expounded.
473. A Lease to A. for life to the use of B. for life.
474. Adulterer contriveth the murder of the Infant.
475. Debt upon a counterbond to save harmlesse.
476. The term continueth but the rent is gone.
477. If Justices absent may grant a Superedeas.
478. Executor may pay himself by retainer.
479. In Dower 2 confesse the action, the rest plead in Bar.
480. Outlawry pleaded, the tenor was brought in.
481. A Sheriffe suffers a recovery, and releaseth Errors.
482. A fine of land to be amortised refused, and wherefore.
483. One cutteth another in Westminster Hall sitting the Court.
484. What triall out of the statute of Feofails.
485. Although the Plaintiff appear not, yet no non-sute.
486. If the Father may grant the marriage of his Son.
487. Where a woman shall be remitted.
488. Justifieth for life by custom a widows estate no good evidence.
486. If a Capias ad satisfaciendum in attachment of priviledge.
490. After an outlawry the Plaintiffe is out of Court.
491. What act is a sufficient delivery of a deed.
492. What is an advancement of a child within 32 H. 8.
493. Where an Avowant shall have decem Tales as well as the Plaintiffe.
494. Where a man in executi. may have a writ of de manu capti.
495. A Conusor of a stat. infeoffees to Conusee part of the land.
496. A Quare impedit shall bee brought where the Cathedrall Church and not the Prebend is.
497. In trespassse in two Closes, the Defendant justified in one, and pleaded not guilty in the other.
498. Whether a surrender of an office by the Master of the Rolls may be recorded after his death.

The Table.

499. An action upon the case for turning a water-course from a Mill, good matter.
500. A purchased Capite land to him and his wife without licence, the Qu. pardoned all offences for any alienation made to him.
501. Where a man estopped to denie a recitall of a condition.
502. Whether the custom for an attachment be good between a Forrainer and a Citizen.
503. In an account what is a good plea for the Bailee.
504. A man in execution in the Kings Bench committed to the Fleet upon a writ of Prerogative.
505. An Officer of Record shall not be removed without a Scire facias of Record.
506. Upon two Nihilis of returns judgment that the Patent shall cease.
507. The Plaintiffe and Defendant both challenge one person.
508. The Sheriffe amerced for not returning the Pannell till after the Bfsoin day.
509. The Lessee covenants to repair at his proper costs, cuts trees upon the same land and repairs.
510. In attachment of goods the Sheriffe must return the certainty and the value.
511. Where the Conusee may have a Scire facias to execute a fine.
512. Where the Lord may seise the Beasts of a stranger for Heriot.
513. Before 27 H.8. a man infeoffed himself and others.
514. A Tales de circumstantibus Hundredi.
515. The Patentee of a house, accepts a grant of the custody thereof.
516. An exemplification of Examination of witnesses in the Chancery given in evidence to prove a man of full age.
517. An attaint brought against the Exec. by the equity of 23 H.8.
518. A woman brings an app. of Rape, and divers good Excep. tak.
519. The Administrator brings an account, the Defendant pleads that the dead made an Executor.
520. Cognizance in attaints denied to a Corporation.
521. In a writ of Dower the Tenant avoucheth the heir who pleadeth nothing by descent infer, the Tenant averreth Asssets.
522. Clerk is a good addition for a Priest or Minister.
523. The Executor recovered in account.

The Table.

523. The will made void because the Testator was an Idiot.
524. Dutchy Court, what prison belongeth thereto.
525. Upon nihil dicit in waste, a writ to the Sheriffe to enquire of the damages only.
526. Debt upon a bond against the heir, is no plea that the Executors have Assets.
527. A private verdict where good.
528. If a man stands mute in Treason he shall have Judgement as convicted.
529. The power of Justices of Gaol delivery on respitting a prisoner.
530. Notwithstanding an entry quod non legit, the Prisoner after may have his Clergie.
531. Comisor of a statute hath a rent charge, and before extent purchaseth part of the Land.
531. A writ of extent executed by inquisition in the time of Q.M. and returned in the time of Q.E.
532. Outlawry reversed upon 6 H.8. without a writ of error.
533. Before the entry of the Lessee the reversion is granted over to severall, the Termor enters and maketh waste.
534. A Certiorari to remain a record capta in Curia nostra taken in time of the predecessor.
535. What Lease made by an Abbot is void by 31 H.8.
536. A Per nomen cannot maintain a grant of Land in lease without an averment.
537. If a man may waive execution against the Executor, and have it against the Heir only.
538. Debt against the Executors, Issue taken upon Assets, a good case.
539. The form of a writ of waste against an assign of a Term.
540. An Array challenged by a Lord because no Knight returned.
541. An Inquisition must be certain.
542. A President of a Colledge is deprived, he shall not have an appeal to the Delegates but an Assize.
543. A condition where it is repugnant.
544. By the name of King the name of Duke is drowned.

The Table.

545. upon a Devastavit returned against one Executor execution awarded against his owngoods only.
546. An interest may survive but not an authority.
547. If Justices of Peace are bound to inquire of Ryot without notice.
548. A Scire facias to execute a fine, estrepment granted.
549. A Plea of Land is not grantable after imparlance.
550. where there must be an office to repeal a Patent, but there must be a Scire facias.
551. If the Jewrie in a Leet refuse to present, the Steward may fine of every of them.
552. The Roll of Exigent is of more credit then the writ.
553. The Lord Keeper may grant a Commission to determine of piracy as well as the Chancellor.
554. In an attaint the defendant may give new matter in evidence, but the Plaintiffe cannot.
555. In a Quid juris clamat, the Tenant claimed fee in part, and attuned for the rest, if the whole fine was ingrossed.
556. A partie may traverse upon return of a Rescous.
557. Debt mentionable without privity.
558. Of what lands the heir must pay primer seisin.
559. where issue in tail shall avoid a rent reserved by fine.
560. Office of Doorkeeper of the Chequer holden by grand Serjeanty.
561. A Tales of 60 awarded in an appeal.
562. where a man shall avoid an outlawry for Error in the Proclamations.
563. A condemnation by Non sum informatus, in an Action upon 3 H. 8. is a conviction.
564. A man committed in execution four yeers after judgment without a Scire facias.
565. A man committeth 2 felonies whereof for one Clergy lyeth.
566. where a Venire fac. was, a proviso is grantable to the Def.
567. He that pleads Quod partes fines nihil habuerunt, must say in possession nor in use.
568. Notwithstanding error in the Proclamations it remains a fine in the common law.

569. By

The Table.

569. By the dissolution Augmentation Court the Receivers Office is dissolved.
570. In a formedon in the reverter, the donor needeth not shew the pedigree of the issue of the donee.
571. An Obligation with Condition to perform an award, much good matter.
572. Five things incident to an Award.
573. A Venire facias with a proviso was served, and 2 hours after a Venire facias by the Plaintiffe was filed also.
574. No Scire facias upon a transcript of Recognizance.
575. By what words a Covenant is not released.
576. A Condition that the obligor upon request shall doe all acts reasonable.
577. A verdict good although one disagree, who was fined for eating, &c.
578. A Condition that the ward being given by parties, may be done by word.
579. From the date, and from the day of the date are all one.
580. By the opinion of all the Judges the stat. of 32 H. 8. is understood of a descent on every disseisin.
581. A devise that his land shalbe sold after his wifes death.
582. A man bound to deliver the key of a house, and quiet possessi.
583. A man declared of 20 l. and gave evidence but of 20 markes.
584. A man seised of Soccage in fee, and of Capite in tail devised a third part of all to his wife for her dower.
585. A Dedimus potestatem dated after the return of the Original.
586. The L. Keep. cannot take a Recognizance to his own use.
587. The fine seiled after the Queens silver paid.
588. Where a Devise taketh away a Descent.
589. Warrantia Chartæ must be brought where the land lieth.
It lyeth not against the warrantor and his heirs except Dedi bee in the deed.
590. A charge by a Prebend void before Indusion.
591. Where a proviso maketh not a condition but a forspite.
Plenty and variety of good matter in that case.

The Table.

592. Condition to pay money at a place, where acceptant barreth.
593. A return by the Coroners of an outlawry is no sufficient record. No robbery without fear of death, and Clergy lyeth.
594. Proclamations upon a fine and 5 years passed before Dower brought.
595. A Bastard born at Tournay in H. 8. time, is a Denizen.
596. The Q. Atturney Justice of Assize, took a fine without a Dedimus.
597. If the wife be joint Purchasor before her husband be an Officer.
598. The land is not liable to an accompt, stat. 13 Eliz. A warrant of Atturney admitted after error brought.
599. The Q. may by her Prerogative make a Sheriffe.
600. Assizes adjourned without day notwithstanding the adjournment of the Term, and yet not discontinued.
601. Diversity between a Demurrer and an Imparlane.
602. Concerning adjournment of the Term.
603. A Scire facias to have execution of Damages, Non tenure a good plea.
604. A grant of an Annuity and 6s. 8d. nomine pœnx, debt for the arrears and penaltie.
605. If the concord be intire, the post-fine shall be but one.
606. Debt upon 24 H. 8. of apparell, outlawry pleaded in the Plaintiffe.
607. What estate may be averred for a Jointure within 27 H. 8.
608. If a Church become void by cession, the Q. shall present.
609. The wife dyed before livery sued, Baron shall be Tenant by the curtesie.
610. Land in L. may be sold by Paroll without enrolement.
611. Obligation to confirm the estate of the obligee, confirmation must be pleaded by Deed.
612. In Dower where the Tenant may plead detinue of Charters.
613. Judgement for clipping money is to be drawn and hanged only.

The Table.

- 614. A servant buyeth wax for his M. it is a debt of the M. and assumpsit of the servant.
- 615. A new reservation void upon estate before created.
- 616. No warrant of attorney, and Judgement reversed although Error brought.
- 617. A grant of a next avoidance between 31. H. 8. and surrender of the Abbey.
- 618. In a challenge for the hundred, he must shew where it is.
- 616. A. forfeited 100 marks for hearing Masse, and died within 6 months, if the Executors be lyable. Quære.
- 620. Debt brought against the Ordinary for a debt of the intestate.
- 621. a Ransome is treble to a Fine.
- 622. Dutchy Leases without the usuall proviso si quis plus dare voluerit are void.
- 623. H. at full age brought Audita quarela to avoid a Recognizance made within age.
- 624. Where by the name of a Manor the Rent and the reversion of the Demeans shall passe.
- 625. A Prior in Covent cannot make Divery by the view.
- 626. Where a Dispensation by the Archbishop is sufficient to hold a Benefice in comendam.
- 627. A Deputy Dean and the Chapter made a lease it is not good.
- 628 If a prescription to hold a Leet when it pleaseth the Lord, be good. Y 929. B.

The Table.

629. B. Certified to be Recusant of the Oath of supremacy by the name of Doctor, and good, and rither notable matter therein.
630. Where a man shall be said to fail of a Record.
631. The wife of N. without her husbands ascent bought velvets and silks if the husband be liable to pay. Quære.
633. A Lessee for life, and he in Reversion may make a Lease forgeries by Indenture.
634. Petty treson is pardoned, but a murder excepted, one who had killed his Master is indicted of Murder onely. Quære
635. A bargain to one who had notice changeth not the use well raised.
636. Where livery shall be sued by the Form.
637. Attaint upon the Statute 23. H. 8. for false verdict in an assise.
638. Where the King may sue in any Court upon a penal Law.
639. An Action on the case for Wards.
640. Executors refuse, the Administrators bring Debt, the Defend. saith he made a testament.
641. If the Queen shall recover dammage in a Quare impedit.
642. Where a Benefice shall be void by taking of another.
643. Where the son shall be in ward for the body.
644. Where the hüre is in by purchase, and where by ancient reversion.

645. Where

The Table.

645. Where the place of impounding a Distresse is
materiall and where not within 1. and 2.
Ph. and Mary.
646. A Trespasse brought upon the Statute de
malefactoribus in partis good matter.
647. Where a man shall forfeit his goods upon a fu-
gam facit.
648. The Defendant in intrusion in the Exchequer
must make a Title.
649. A Customer liable to the abuse of his Deputy
650. By the Outlawry the originall is determined
against an Infant.
651. Where a Lease by a pro. Parson imparsoned.
is good.
652. Where a Covenant for enjoying is broker.
653. What Act within a Forest is a purpresture.
654. Where words of Surplusage shall not prejudice.
655. What is a good return for the Sheriffe in case
of Rescues.
656. A Quare Impedit against A. he maketh de-
fault at the grand Distresse.
657. A man indicted of Pyracy stood mute, and had
Judgement of pain, fact, and dure, and after
had his Clergy.
658. Where notwithstanding a practise between
the Clerks and Atturney, an Execution
stands in force.
659. An Award adjudged void for three causes,
good matter.

The Table.

660. Where perjury is punishable in the Star chamber.
661. Where a writ of Partition lieth at the Common Law.
662. Submission to an award by Obligation upon Demurrer. three resolutions.
663. A Bill of Debt against an Attourney by the name of husbandman voyd.
664. I. an Assise where the Plaintiffe is at his perill to choose his Tenant.
665. Grantee of an Advowson maketh a Lease to begin after the Incumbent void.
666. A Sheriffe amerced ten pounds and a Faكتور five pounds for a practice.
667. After a Writ of Error delivered, no Execution can be awarded.
668. Where one of the Tales may be joined with the eleven principall.
669. One in Execution in the Fleete, caused himself to be indicted of Felony.
670. If at the Common Law the Sheriffe may not make a Replevin without a writ.
671. Where the marriage of a woman shall hinder the recording of a Fine.
672. Tenant in Tail makes a Lease to begin in futuro. Quære.
673. A Replevin against the Bishop and others and severall Issues, the challenged, the Array because no Knight, a good challenge for all.
674. Assise

The Table.

674. *Assise of land in M. when he pleads a Lease Of a house in S. and averres that to be the same Land, a Demurrer.*
675. *After Administration committed, no Action lyeth against the Ordinary.*
An Avowson cannot commence since West. 2. Cap. 19.
676. *What persons by a private Statute of a Colledge may dispence of the absence of a fellow.*
677. *In a writ of Right where the Tenant shall first give his Evidence.*
678. *In a Formedon when a man shall make himself Cousin and heir to a Grandfather.*
679. *Where Debt lyeth against the first Lessee for Rent after assignment.*
680. *Where an Estate in Fee may be averred to be a Jointure.*
681. *A Steward or Bailiffe may be made without deed.*
682. *If he which hath a Freehold in a Mill may have an Action of the Case or Assise for turning the water.*
683. *A commission in the nature of an Extremum Clausit.*
684. *What is pardoned by 5. E. of all intrusions and Entries.*
686. *Prisoners must be kept strictly by first Rich. 2. and 24. H. 8.*

The Table.

687. No error in the Common-p'cas for a judgement before the Justices of Assize at Monmouth.
688. where an action of the case lieth not, but an assize of Nuisance he stopping the way.
689. where a grant Coppy-hold is by authority of the Lord.
690. where a release is void for want of words of surrender.
691. A surrender of divers parcels by particular names, and concludeth generally, what passeth.
692. Tenant for life is content that the reversioner shall have his interest. It is no surrender.
693. If a formedon be returned vtrarde and an Alias summons sued, the tenant cannot be Eljoynd.
694. The Incumbent of a Chantry made a Lease for 99. yeers, whether the King may avoid it.
695. If a grant of a war ship in the life of the father bee good.
696. A rent granted to one and his assignes during the life of C. the grantee devised it, who shall have it. quare.
697. what shall departure and Joinsall.
698. A Lease is made for 41. yeers to A. if he live so long, and if he die, that his wife shall have the residue, avoid limitation.
699. Where the Clerk of the Crown must certifie a conviction in the name of the Justices, where the principall was but a murderer, it shall not be pety treason in the wife.
700. If the Kings Sil. be entred the fine may be ingrossed.
701. A Termor deviseth his terme and dieth, the devisee enters, the lessor brings debt for rent, and barred for 2 causes.
702. what is a good cause for the Bishop to refuse a Clerk.
703. who may devise lands in I. by the custome, but not in Mortmain.
704. A condition was, that if the obliger suffer, the obligee to enjoy, &c.

The Table.

705. He which hath a benefice above 8. pound, takes another, it is void without notice.
706. Value of marriage lieth without tender.
707. A demise made 4. and 5. Philip and Mary to a College to a charitable use is good.
708. If the Commissary of the Bishop grant letters ad Colegendum & extendendum ea quæ peratura essent, it is void.
709. If the infant in ward ought to warrant till the hand of the King be removed.
710. When entry of proclamations upon fines begin.
711. Where a trespass de mali eri raptu & deducta, shall be brought.
712. An Avowry for rent holden insufficient, for diverse causes.
713. A writ of pledges acquetrandes brought, and judgement given for the plaintiffe.
714. A difference between a Covenant expressed, and a Covenant implied.
715. Where aid of the King shall be granted.
716. In an ejectment of tithes judgement for the plaintiffe, but 6 good exceptions taken.
717. A reversion received pleadeth and found for him, and tenant for life dieth before judgement, quære.
718. Where a man may grant an office in reversion.
719. By an union 2 churches become one, good matter.
720. What is a good excuse for the Ordinary for not returning a writ.
721. Debt upon a Lease for yeers of severall parcels and non demised pleaded.
722. The Queen grants the ward and marriage of the body saving the land, the grantee tenders marriage, which is refused, he cannot retaine.
723. Where an error in the record of Nisi prius is amendable.
724. Upon an appeale of murder a man is found guilty of manslaughter.
725. A man demised all his lands in the Town and in one Hamlet.

The Table.

76. A Rasure in a lease by the Lessee himself, where it maketh a lease void.
727. A condition of an obligation become impossible by death.
728. A debt due to a taxor desc by contract is not forfeited.
729. A false judgement in a judgement given in an antient demeane. Severall errors assigned.
730. Where a release is good without words of enlargement.
731. In a writ of dower the tenant maketh default, and a teneur was received to fine his terme, by the statute of Gloster, Chap. II.
732. A woman copy-holder for life, takes a husband, who surrenders the copy-hold, and dieth, the wife may enter.
733. A new assignement of trespassse must be certaine.
734. Where an exception is but temporary, and where repugnant.
735. A man deviseth land to be sold, and the money to be disposed in legacies.
736. Where inquest shall be awarded by default.
737. I account, the defendant wargeth law, and after ward have confessed part and made law, for the residues, it cannot be.
738. The Justices of peace must certifie their agreement upon servants wages.
739. In debt against a Lord, a venire was returned, if the Array be quashable, a venire facias de novo shall not issue.
740. At the day appointed to give Verdict, one Juror maketh default, the Sheriffe returned a fine of 40. shillings on him.
741. What shall be intended a joynture without Averment.
742. Whether a Sheriffe can summon himselfe.
743. Where the Titholder shall be charged with the losse of his guests goods.
744. No disseisin against a Patentee, because at the first no disseisin against the Queen.
745. Where a Lord may lose his villain for want of claim.
746. What

The Table.

746. what is a Colledge in the statute of 1.E.6.
 747. where an Issue is liable by 2 severall Counties.
 748. where notwithstanding a feoffement with collusion, the Queen shall not have the ward of the heir.
 749. The form of false judgement.
 750. where the King shall have a ward, because a ward, and diverse notable cases where a generall patent shall not extend to speciall cases.
 751. Construction of the words, ex gratia speciali certa scientia & mera motu suis, a difference between false suggestion, false information, and false cause.
 752. whether the death of one tenant at will do not determine the estate.
 753. where the first proclamation upon a fine is well made by 4.H.7.
 754. A command by the Queen ceaseth by her death.
 755. where a Coppy-holder is subject to distress for rent Arrear, a diversity.
 756. In a writ of right, where a venire facias in the nature of a habeas corpus shall issue to the Sheriffe.
 757. In debt to perform Covenants, tryall shall be where the land lieth.
 758. Debt upon escape lieth not on the heir of the Tylor.
 759. Right due to a feme soule, she marrieth A. who makes an acquittance on feast after the marriage.
 760. Husband and wife outlawed, and she is pardoned but not allowed, because she cannot have a Scire facias without her husband.
 761. what is a lease for 20. yeers by a tenant in tail within 32. to bind the issue.
 762. In debt the heir pleads nothing by descent, the plaintiffe pleads Asssets in Land, gives in evidence at C. quare a diversity.
 763. A termor granteth his terme to begin after his death, it is void.

764. what

The Table.

764. What promise is a good assumpsit in Law.
765. What shalbe a wast raising Coppers.
766. What words do not amount to a surrender but to a covenant.
767. A deanary is a spirituall promotion and not temporal if the taking dignity in the same Church by a dean maketh a deanary void,
768. Where feoffees to use may enter and have an action to revive the old use.
769. Two brothers & the eldest had cause of petition to the King for lands, the youngest had issue and is attainted.
770. A fine levied to the use of the cognizer and to the wife that he shall marry, it is a good joynture, otherwise of an estate executed.
771. Where a certiorari shal issue out of the Kings bench to remove a fine.
772. By what commandment or authority the marshal may suffer one at execution to go at large.
773. False imprisonment is brought the defendant pleadeth that the defendant is excused.
774. No collusion to defeat the queen of wardship if a third part be left,
775. where a Scire facias lieth against a Corporation to the repeal of a patent of fairs.
776. After laps to the queen one is instituted and indicted quere.
777. The Bishop collateth by laps, the Patron presents before induction the Bishop may refuse.

The Table.

778. *A ward fell to the Bishop of D. who died before ceazure, h. s executor shall have it.*
779. *A formedon upon a remainder in use, he needeth not shew the deed for 2 causes.*
780. *A terme devised to an executor, who enters generally he is in as executor, where the remainder of a terme is void.*
781. *Where a Patentee of the King shall hold lands discharged of tithes.*
782. *Where a grant by a Corporation is good notwithstanding a variance in the name.*
783. *A formedon in defender is out of the statutes of Limitations.*
784. *Upon an habere facias seizinam seizen preserved of a third part by the Sheriff, by metes and bounds and refused it, the demandant may enter.*
785. *The deputy of the Marshall of England liable to an escape in debt.*
786. *A Scire facias upon a recognizance to perform covenants, what pleading for the defendant is good.*
787. *Where acceptance of a rent affirmeth a lease.*
788. *A next avoydance is granted to 2 who joyn in a quare impedit, and one dieth.*
789. *W. bound by the name of I. the Action must be brought against him by the name of I.*

790. *What*

The Table.

790. What is good Prescription forraign bought and forreign sold.
791. The Dean and Chapter is holden to be a body within the Statute of 31. H. 8.
792. How a Distresse upon a return irrepledgable shall be ordered.
793. In a Replevin the Defendant acknowledgeth taking at Bailiffe of I. S. good matter.
794. A Feoffment of a house and 17 acres of wood (in a great wood) at the election of the Feoffee and his heirs before election, the Feoffee died the heir cannot make election for 3 causes.
795. A lease upon condition not to make wast, and he suffereth wast. Quære.
796. Divers resolutions upon the Statute of 5 Eliz. c. 2. touching of importation of booke written against the Queens Supremacy.
797. The Archbishop of D. hath 2 Deans and Chapters, the one surrenders to the King, the other confirms a Lease made by the Bishop.
798. The Church being void, the Patron granteth the next avoidance, it passeth not, but otherwise in the case of the King.
799. A Feoffment of 3 acres in one County, and livery made by one in the name of all.
800. A. Infeoffs an alien and denizen to his own use, if the office be found, the use to A. of the M^{ty} is gone.
801. Damages shall not bee recovered in dower but

The Table.

but where the husband died ceazed.

802. What misconveyance of proceſſe is aided of
a Jeofail within 31. H 8.

803. Where the plaintiff may proceed in an attaint,
althoug the record be removed by error.

804. Where a generall livery is good,

805. Where a writ Scandalis Magnatum lieth.

806. An indictment of assault against one with-
out a surname.

807. A tenure of land to be Constable of England,
as Grand Sergeant if such an office descend
to daughters how it shall be executed.

808. Whether the pate-tee of herbage may main-
tain a trespassse.

809 Upon an exigent of a judgement the defen-
dant cannot appear gratis.

810. Where a pardon of intrusion is good, and by
what words.

811. Where a lessee may enter the same day the
lease is dated.

812. Where the default in the plaintiff shall make
a non-suit.

813. Triall of treason where it shall be

814. What shall be conveyance within 33. to
give wardship to the King.

816. What writ of privilege is with a Superſedeas.

817. Outlawries against Traytors which fled in-
to Scotland good.

818. What Benefice is given to the King by the
first of Edward the sixth.

819. Where

The Table.

819. *Where a bil of perjury may be sued in chancery*
820. *What act may amount to Forgery of a Will within 5 Eliz.*
821. *Where an attorney in attachment of privileges shall find pledges.*
882. *An exception shall be good in the Kings grant but not in the grant of a Subject.*
823. *Jura Regalia granted to the Bishop of D. and the extent of the grant.*
824. *A ravishment of Ward lyeth where the ward was done.*
825. *Where an estoppel shall not bind him that pleadeth it.*
- 8:6. *Bishop of L. being high Commissioner is translated to Y.*
827. *What remedy one hath for rent, who cometh in, in the Post.*
828. *What is a good counterplea in voucher, much good matter.*
- 8:9. *Where Possessio fratris may be of a Coppyhold before admittance.*
830. *Where one may revoke his Presentation.*
831. *Where the first Office must be traversed, and where it is void.*
832. *The Parish of H. extends unto the County of B. and W. one made a Lease of H. in the County of B. whereas it lay in W. good.*
833. *If the Patron present a meere Lay man, notice is not necessary to be given by the Ordinary.*
834. *What*

The Table.

834. *What words amount to the resignation of a Prebend.*
835. *Whether a Commission of an administration be good or not. (Quære.)*
836. *The Defendant before triall of Issue maketh a fraudulent conveyance of his land, (Quære) if the land be liable.*
837. *Where an Exigent shall issue into a forreign County.*
838. *(Quære) if Prescription to inclose be destroyed by unity.*
839. *If a man go beyond Sea without licence, whether he be punishable or not.*
840. *Where a man shall be executed upon indictment an appeal depending.*
841. *where an use may be raised upon marriage to a younger son upon a bare promise.*
841. *A bastard is no lawfull childe 32. H 8.*
842. *The Kings bench hath no authority to commit a man in execution to the Fleet.*
843. *An insufficient declaration is not aided by 32. of Jeofals.*
844. *What Act amounts to Attournment.*
845. *What act makes a man a traitor within 25. of E. 3.*
846. *A conspiracy beyond the Sea, of a subject to invade the Realm is high treason.*
847. *A wardship and marriage divested out of the King.*
848. *Where*

The Table.

848. where an Executor may have an Extent.
849. The Grantee of the next avoidance needeth not have the title of the Granter.
850. what Conveyance will create a Tenure in Capite.
851. An Elegit served and not Returned, is a good Election.
852. The name of Dignity is parcell of the Issue.
853. A Suggestion of a writ to the Coroners ought to be a principall Challenge.
854. The Queen grants a manor and all Advowsons belonging the Presentation passeth not.
855. The Defendant in Debt upon a Bond shall not be esloped by an Importance to plead now ready.
856. If a Spaniard commit Treason beyond Sea against our King, and after come into E. if he may be arraigned.
857. If a Feoffment be made to one and his heirs untill J. S. pay 100 pounds, if J. S. die, the Feoffee shall hold it for ever.
858. In a writ of Right the Tenant chose Triall by battell, but the Plainiffe was non-suit.
859. Two Johns sons, one reputed a bastard, and John found heir by office, it shall be intended the right heir.
860. Forgery of a will by which a tyme is devised, is within 5. Eliz.
861. The copy-hold of an Idiot shalbe ordered in the court of the Lord of the Manour.
862. For lands in Chester the commissian of Mandamus must issue out of Chancery there.
863. who may grant the office of an Almogev.
864. A Devise to an infant in his mothers belly, if good.
865. Upon a conviction of Forgery what damages shall be given by 5. Eliz.

866. Verdict

The Table.

- 866. Verdict passed for the plant. in an erectment moved in arrest of judgment that the Lessor was not in life.
- 867. Tenant in taile maketh a Lease rendring 20. s. rent, and releases 19. and dyeth.
- 868. A next avoidance is granted to 3. habendum iis & unicorum conjunctim & divisim.
- 869. Where the heir at full age shall sue Livery, 32 H. 8.
- 870. An Indictment of wilfull murder void without Murdravit.
- 871. An Edictione firmæ declared of a Lease of 300 Acres by the name of a Mannor.
- 872. Where a man may plead not guilty to part, and justify for the residue.
- 873. By whom & where administration shalbe committed.
- 874. A trespass by husband and wife of the lands of the wife, while she sole, Ad grav. damna ipsorum.
- 875. A Certificate by the Bishop of Espousalls void.
- 876. What Act maketh a man Executor.
- 877. A Recognizance to save a Gaoler harmlesse, the Gaoler not damnified for three causes.
- 878. What office shall make a Tenure in Chivalry.
- 879. A ward died at full age before tender of marriage.
- 880. An Action of Trower brought for a Hawk, the Plaintiff must declare that he was reclaimed.
- 881. The day of the Delivery of a Deed is the day of the making thereof.
- 882. A Debtor to the Queen is in execution in the Marshalsee, the Exchequer Writ to the Marshall ad habendum corpus by prerogative.

The Table.

- 883.** Lessee for yeers deviseth without limiting any estate.
884. What remedy to compell Lessee for yeers to atturn.
885. Where the heirs of the wife and not the heirs of the husband shall have the land.
886. A man indicted of piracy stands mute; if he may be indicted again.
887. If many issues be advanced, yet one livery shall suffice for all by the statute.
888. A Lease for three Mannors rendring for one 6 l. one 5 l. another 10 l. a case full of much good learning.
889. A Tenant for life, the remaind. to his Exec. & Assi. for 21 yeers is attainted the Q. shall have the remaind.
890. Three were bound by Obligamus nos & utrumq; nostrum per se, how it shall be sued.
891. A devise in Gavelkind land in writing may be guided by words.
892. In a Mordancester a diversity where the Tenant pleadeth at Bar, and where abatement, the writ.
893. Where a proviso maketh a Condition.
A gift in tail made by a woman to a man rendring rent may be averred causa Matrimonii prolocuti.
894. A writ of Entry in the quibus against A. & B. and found that A. only deceased, judgment shall be given for all.
895. A Tresp. upon the stat. that none shall restrain the beasts of the Plow, if other distresse may be found.
896. A Tenant in tail, the remainder in taile levied a fine and died without issue, a stranger enters to revive the remainder (Quære).

897. Se.

The Table.

897. Several good resolutions upon 21 H.8. of pluralities.
898. A Lease for twenty years to three, and two of them take a new Lease for 30 years to begin after the 20 years.
899. The Defendant in asswry for rent said, that the Grant was seised in Fee, the Plaintiffe said, hee was seised in taile.
900. A Seigniorie Chancery lands is extinct by possession of the King but the rent remaineth.
901. What is a good Certificate of lawfull matrimony by a Bishop.
902. A Bastard is no lawfull generation to sue livery within 32 H. 8.
903. A Covenant by the Lessee to repair at his proper costs and charges cuts trees, and pleads the house fell down by a tempest.
904. Upon payment of money an use is transferrad.
905. A recovery to the intent the recoverer should perform his will intended his last will.
906. A Peer shall not be impanelled without speciall command of the King, or necessity.
907. If the omission in Misericordia shall make all the judgment void to the party.
908. A judgment in a Recognizance in Chancery reversed in the Kings Bench.
909. In a Formedon in reverter or remainder, he need not alledge seisin within 50 years.
910. Where a Counterplea of a receipt of a wife in Formedon is good.

The Table.

911. The Husband sowerth the land and dieth, whether the wife shall have the land and not the Executors.
912. A Juror challenged because hee had nothing within the Hundred at the return of the term, good matter.
913. A Commoner because of visenage may not put his beasts into the other soil.
914. Gavelkind is devised to the eldest son upon condition, which is broken, if the youngest may enter into the moiety.
915. An outlawry in London, judgment is given by the Recorder.
916. An estate upon condition is a good jointure.
917. An action of the case for words.
918. Where the beasts of a stranger are lyable to distresse for rent.
919. The Earl of K. brought an action by the name of Esq; the tryall good although no Knight be returned.
920. A Covenant that if a verdict passe against the Lessee the rent shall cease.
921. A bargain and sale proviso that the bargainer shall retain for 20 years.
922. Capite land is extended, the Tenant dyeth, is beire within age.
923. Two Executors Plaintiffs, one is summoned and seuered, he may release before judgement, but not after.
924. A man hath a rent charge and grants, and releaseth it to the Tenant of the Land.
925. A trespassse upon the case for diverting a water course.
926. The

The Table.

926. The Defendant in ejectment shall have aid of the Queen in reversion, search lieth not in aid prayer but only in a petition of right.
927. Severall Errors assigned upon a fine levied at Chester, very good matter.
928. A special occupant shall not have aid.
929. A distresse by the Lord by the custome for breach of a By-law.
930. A debt lieth not against Executors for an escape by the Testator.
931. Forgery of a customary of Copyhold is within 5 Eliz.
932. What is a good devise of land by intention.
933. By name of all Hereditaments an advowson of a Vicarage passeth.
934. A man convicted for three Masses forfeiteth but 100. l. upon 1 Eliz.
935. The under-Marshall within 23 H. 6. for taking security.
936. A Termor covenanted to repair, and the house is burned down.
937. Where a feoffment by him in remainder in tail maketh a discontinuance.
938. Tenant essoined after issue joined.
939. A. seised of land giveth in tail to one of his daughters who is attainted by act wherein there is a Saving, the other daughter may enter.
940. A writ of Estrepment between judgment and execution.
941. Assise of two acres two severall Bars pleaded.

The Table.

942. A devise of a house to a woman, and her brother, and to the heir of every of their bodies, they are severall estates.
943. The Sea left a great quantity of land upon the shore, Quære.
944. Whether Unity doth not extinguish a Purleiw.
945. A Chapleyn qualified for two benefices takes a third, Quære.
946. In lapsed how the six months shall be accounted, and what is a good notice.
947. A promise that the lessee shall hold against a wrong doer.
948. A writ of privilege disallowed to a Receiver.
949. A Lease made to one his Executors, and assignment for the life of another, who made a Lease for yeers vendring rent, Quære.
950. A Terme devised to his son at his full age, in the mean time is sold by the Wife, what remedy, Quære.
951. In what place a rent must be tendered.
952. Debt upon a Bond to perform an award.
953. In a false Judgement the Record was removed, and the Plaintiffe nonsute, a Scire facias shall goe for damages.
954. What shall be intended a Knights fee.
955. In a will the land shall be intended Soccage.
956. Where Feoffees may enter to revive the ancient use.
957. Essoyn entred in the Roll of the Court, but not in the Essoine Roll.

The Table.

Diminution alleadged in policy in a writ of Error.

958. In *Adowry* Seisin alleadged within Fifty years.
959. In a *Will* if the intent be expressed no implication shall be taken.
960. Detinue by the wife against Executors of the second husband for the goods of the first husband.
961. 34 H. 8. of Misnomer shall not aid non nomenclator.
962. Upon an Extent where Audita Querela layeth for Contribution.
963. Conspiracy with a servant to kill her husband is petite Treason in both, otherwise with a stranger.
964. Waste in cutting 10 trees, the Defendant justified as to three.
965. Issue in speciall taile must convey by Father and Mother.
966. What is a good cause of disfranchisement of a Citizen.
967. What words make an Estate taile in the Will.
968. Where issue in taile may averre continuance of possession against a fine.
969. A Condition the Lessee shall not alien without licence, he aliens part with licence.
970. Feoffees to use must make election before it selfe in Cestui que use.

The Table.

971. A Remainder seniori puero indifferent to both sexes.
972. A Letter of Atturny to enter into 3 acres, who enters into two in the name of all, where not good.
973. Where an acceptance of a rent is void.
974. Where a Covenant lieth for the heir although not annexed to the land, and the Covenanter is bound to seal upon request.
975. Whether property in an estray be in the Lord before seizure.
976. An infant after full age non-suit shall be amerced.
977. What is a lawfull tryall by a Tales by 35 H. 8. ca. 6.
978. A Prebend maketh a Lease for 70 years, which is confirmed as to 51 years, & non ultra.
979. Tenant for life maketh a feoffment, be in remainder for life cannot enter.
980. The Lord improveth parcell of a wast, and infeofeth the Commoner of the improvement, no extinguishment of the Common.
981. Execution sued, and an Audita Querela brought.
982. What act is a revocation of a former presentation.
983. A feoffment of him in reversion, and livery in the absence of tenant for life will passe the fee.
- i. Where a wife shall take a jointure before she was in esse.
984. Where a counterplea of Voucher lieth.
985. What lease is Covinous within 27 H. 8.
986. The four first letters in a Patent interlessed, and yet good.

987. Where

The Table.

987. Where the Collateral heir of the youngest shall inherit.
988. Divers excellent matters resolved in a case between the Earl of A. & N.
989. After recovery by Nihil dicit the heir cannot plead nothing by descent, What judgment shall be given against the heir.
990. Election to make an annuity is ended by the death of the Grantor.
991. Tenure to serve the Prince in his wars is not capite.
992. A Bastard is not a child within 32 H. 8.
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